Supreme Court, U.S.
FILED

CASE NO: 01-16250

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IN THE SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER

Petitioner

v

RICHARD J. SPEAR

Respondent

On Petition for a Writ of Certiorari
to the Ninth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Statement of issue.

A chapter 7 case filed on behalf of petitioner on March 26, 1996, in the state of Maryland , was closed by the court on July 7, 1996. The former trustee had abandoned any all possible assets of the estate. On April 27, 1998 , a scorned and angry ex husband contacted the former trustee, asked him to reopen the closed case, to harass petitioner and offered him a bribe to do so. The former trustee agreed, and on May 7, 1998 the bankruptcy court reopened the two year old closed and discharged case. On the advise of counsel the case was changed to a chapter 13. Just before the final approval of the plan , a familial tragedy occurred in California, which required petitioner's immediate relocation to Northern California . The court in Maryland did not cooperate in speeding up the process of the final signatures on the plan. Therefore, trusting that a court is a court requested that the case be transferred to the Oakland , California bankruptcy court, and it was done. What petitioner encountered in the Oakland bankruptcy court is : a corrupt abusive, ignominious , mafia like enterprise , peopled by depraved lawless predators , modeled after the Third Reich. They extorted and petitioners assets and divided them among themselves, despite there being no party in interest with standing. There were four bankruptcy court decisions that were appealed. Two were consolidated and the Court of Appeals combined and wrote a 50 word decision about all of it. This petition for a writ of certiorari is about that decision, covering it all.

Questions presented

1. May a corrupt malicious, hired Article I bankruptcy court judge , the ignoble R.. Newsome extort, seize, steal and convert petitioner's lawfully held assets , not on behalf of a party in interest, but fraudulently and criminally "gift a couple of coconspirator cronies with them, and does this represent Constitutional violations and an illegal "bill of attainder"?

2. Did the Ninth Circuit Court of Appeals violate petitioner Constituional rights to substantive and procedural due process, and her property rights?

3. Did the Court of Appeals review the facts and applicable law de novo, or just affirm the lower courts?

4. Did the Court of Appeals improperly deny petitioner's right to oral argument as per F.R.A.P. Rule 34?

5. Is there an identifiable party in interest that moved this proceeding forward, or was it the corrupt predatory opponents that felt that under the circumstances petitioner is easy prey, and she can be robbed at will, and pursued it ?

6. Did the Court of Appeals identify any fact finding or evidentiary proceedings or mini trial, given that the Court is well versed in the Constitutional requirements of due process and equal protection, as well as the bankruptcy rules?

7. Since this Honorable Court has held several times that every person is entitled to an unbiased judge, has this been observed in the present matter on any level, or has judicial bias permeated the proceedings?

8. Should petitioner's extorted and stolen assets -stolen by the "bankruptcy mafia" be returned to her as promptly as possible?

9. Did the Court of Appeals err in stating that "even if they held that the chapter 7 assets were abandoned , the reopening was legitimate, and is this statement frivolous ,imprecise, almost silly because it represents a two year time lag and does this represent general bias by the Court of Appeals, and a "who cares "attitude?

10. Did the Court of Appeals find legitimacy in the reopening which was by a former trustee without standing, acting on behalf of someone without standing, who promised him a bribe, and he lied to and deceived the tribunal i.e. the bankruptcy court into reopening?

11. Was it error or abuse of discretion by the District Court not to do any review and just affirm the bankruptcy court?

12 .In the original chapter 7 petition, which is the gravaman of this matter, were all of petitioner's assets or potential assets scheduled?

13. Since the former Maryland trustee Scott Field Esq. had the duty ad opportunity to investigate the present matter, did he do so and represent to the court that he had done so?

14. Were all the assets , most of which were exempt under Maryland law abandoned by the trustee pursuant to 11 USC # 554 (a) after the case was closed by the court?

15. Did the former trustee have standing to seek reopening of the case, two years after his dismissal, other than the promise of a bribe?

16. Did the former trustee Field deceive the court when he sought reopening, deceiving by omission and commission of fraud?

17. Did the bankruptcy court in Maryland even superficially inquire regarding standing to seek reopening, and on who's behalf?

18. Was the bankruptcy court in Maryland uncooperative when asked to hasten the chapter 13 confirmation process because petitioner's life required immediate relocation to California ?

19. Did the bankruptcy court in Maryland act on perjured information by the former trustee and before transfer reconvert the reopenend case to chapter 7?

20. Did the Oakland bankruptcy court and judge Newsome follow the law, the rules, and respect petitioners Constitutional rights after the case was transfered ?

21. Did judge Newsome have jurisdiction in this matter , or did he create it for himself through deceit, debauchery, and fraud, to extort petitioner's assets?

22. Does a "bankruptcy mafia " exist in the Oakland bankruptcy court consisting of an abusive corrupt judge Newsome, a "phantom private trustee" named Richard Spear, an attorney who really a procurer-broker of thousands of bankrupcty cases annually and has been for more than 30 years , whose name is put on the cases and he resells them to other attorneys, and in the instant matter sold petitioner's case to someone named Dennis Davis, considered to be the most unethical ignoble deceitful attorney in the san Franciseco bay area, and they are judge Newsome's favored and favorites?

23. Was petitioner who was new in the area , and in deep personal despair, without counsel, a match for this mafia?

24. When petitioner realized her mistake in trusting in the judicial system and her erroneous belief that a "court is a court" , and not knowing that some courts are dens of corruption and predatory depravity, did she therefore attempt to exit the bankruptcy system by filing a Motion to Withdraw the chapter 7 petition and vacate the discharge , both proceedings provided for in the bankruptcy rules?

25. Were these motions ever heard, or scheduled to be heard?

26 Isn't that corrupt hypocrisy and abuse of the legal process and his job by the ignoble judge Newsome because , although there was no wrongdoing on petitioner's part he tried to allege some, therefore should she and the creditors not have been put back in the position they were before the filing on March 26, 1996?

27. Was petitioner doubly victimized, by being falsely accused by the bounty hunters of some unspecified or unproven wrongdoing, but not permitted to exit the system to enable the ignoble judge Newsome and the cronies to extort and steal her assets for their own use?

28. Was there ever an evidentiary proceedings in this matter or a trial, despite petitioner's repeated requests for same, and the demand of bankruptcy rule 11 USCA # 5010 that the first proceeding in a reopened case must be a fact finding hearing to determine the validity of the reopening, and whether a trustee is called for?

29 Do the rules and the law on reopened cases overwhelmingly call for nothing be put back even in a legitimate estate without a a fact finding proceeding?

30. Did the ignoble judge Newsome violate petitioners Constitutional rights provided for in the Fifth and Fourteenth Amendments to same, by interfering with her property rights, denying her equal protection substantive and procedural due process?

31. At the first encounter with the ignoble judge Newsome did he inform petitioner that he would take away her assets and give them to the cronies ?

32. Did he make the same statement at the last encounter and boast about it with an "I told you I would" , at which he gave all her assets to the chosen crony bounty hunters?

33. Since petitioners assets were not only abandoned by the former trustee in Maryland pursuant to the bankruptcy rules when the case was closed, and are also exempt pursuant to Maryland State law, which has opted out of the federal exemption system, did the courts starting with the ignoble Newsome through the Court of Appeals violate the rules of another state, despite the Erie Doctrine?

34. Was petitioner unequivocally entitled to her assets which are exempt under Maryland law, regardless of the corrupt dissent?

35 Throughout this reign of terror evocative of Nazi Germany, did petitioner have, or was she able to obtain counsel?

36. Despite it being a crime did, the ignoble Newsome, along with the other coconspirators of the bankruptcy mafia suborn the hiring of a stalker burglar cum investigator, who stalked petitioner, burglarized her residence stealing all her personal records and creating mayhem in her life?

37 Did the lengthy proceedings in this matter that wasted judicial - therefore public resources and in the process prostitute the laws of the republic have any other intended purpose or outcome other than stealing petitioner's assets and giving them to the cronies Spear and Davis and whether Newsome benefits petitioner does not yet know?

38. Did judge Newsome a abuse his authority and the tenets of his job?

39.. In their ignominy did judge Newsome and the bounty hunters Spear and Davis generate false documents to create a fraudulent entitlement to petitioner's assets and call them "fees".?

40. Was judge Newsome's seizure, extortion and conversion of petitioner's assets an unconstitutional bill of attainder against her?

41. Did judge Newsome have jurisdiction in this matter or did create his own?

42. On whose behalf was Newsome he acting i.e. who had standing to seek relief, and what was the controversy- as this Honorable Court had repeatedly articulated as necessary for a claim to go forward, other than his conspiracy with the cronies to steal petitioner's assets?

43. If the ignoble judge Newsome had any evidence of wrongdoing on petitioner's part should she not immediately had all the constitutional protection that attach to an accused rather than his ex parte extorting and stealing of her property?

44. Did Newsome, and his cronies Davis and Spear select petitioner to hunt, terrorize and rob her because like all depraved predators they concluded that she is vulnerable and can be exploited?

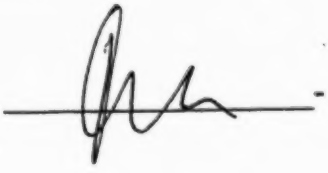
45. Is judge Newsome the subject of numerous misconduct complaints to the Judicial Council of the Ninth Circuit , as well as through the appellate process by attorneys and pro se litigants , alleging denial of constitutional rights , abusiveness, not letting people speak, making decision ex parte in his bunker and coming to work to read them, deceit, disrespect for persons and the judicial process, "practicing law" continuously on behalf of those he favors, preventing attorneys to represent their clients, with at least one of the complaints being a reported one, and does the Ninth Circuit Judicial Council inexplicably protect him by covering up his misconduct, and therefore not meeting their responsibilities?

46. Are there complaints about Spear and Davis, a reported case about Davis perpetrating a continuous a gross, brazen and shameless fraud and deceit on the San Francisco District Court until he was caught?

47. Was petitioner who was new to California , having just arrived, in grave personal distress , without counsel, not a perfect prey for this depraved bankruptcy mafia, therefore should not all their actions in this matter simply vacated and maybe hold them accountable

Rule 29.6 Corporate Disclosure Statement

Petitioner hereby declares that there are no corporate interests involved in this matter.



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Jurisdiction by this Honorable Court for a Writ of Certiorari

Article III Section 2 of the United States Constitution vests the Supreme Court with the judicial power and jurisdiction to all cases and controversies in law and equity , and appellate jurisdiction to same. Pursuant to 28 USC # 1651 (a) the Supreme Court and all courts established by an Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the principles and the usage of the law. Pursuant to 28 USC #1254 (i) cases in the Court of Appeals may be reviewed by Writ of Certiorari granted upon the petition of any party to a civil or criminal case, before or after rendition of judgment, and as the Honorable Justice Stevens said in *Florida v Rodriguez, 469 US 1, (1984)* " as the court of last resort in the federal system , we have supervisory authority and therefore must occasionally perform pure error correcting functions in federal litigation".

Decisions in the lower courts:

The Ninth Circuit Court of Appeals Panel denied rehearing en banc on May 19, 2003 , from a decision by the Panel dated March 27, 2003 . The District Court in San Francisco , Judge M. Chesny affirmed the bankruptcy court on April 18, 2001, and August 15, 2002.The BAP affirmed the bankruptcy court on October 15, 2001. The decisions appealed were made by judge Randall Newsome on December 18, 2000 and April 25, 2001.

Statement of facts.

On March 26, 1996 a chapter 7 bankruptcy petition was filed by a well known Rockville Maryland law firm on petitioner's behalf . in the bankruptcy court in Greenbelt Maryland. At the time petitioner was a resident of Bethesda ,Maryland. This followed having been a long time resident of Amherst New York, and nine years of being the plaintiff in action for divorce in Buffalo New York. The attorneys prepared all of petitioners schedules, and all the debts , assets , potential assets , exempt assets and obligors to petitioner were scheduled . (App. 1) Among the relevant assets scheduled are: a) the ex spouse as an obligor, as he still owed petitioner more than $60.000, b) a claim against a bank for conversion of two checks in amount of $96.500 with petitioner's name on them , and honoring them when presented by the former spouse, without petitioner's endorsement, which claim had been dismissed and was appealed, and came to be referred to as the "bank claim" and c) a trust for the ultimate benefit of petitioner's children from a prior marriage created in April 1986, which held petitioner's IRA, exempt under Maryland law from the bankruptcy estate, an apartment in Florida that was part of the marital distribution also exempt under Maryland law from the bankruptcy estate as a homestead exemption, and some of the marital distribution funds. All these assets in the trust named the " Max Family Trust "were tax exempt under the rules of the Internal Revenue Service, as they were all part of the marital distribution. A trustee named Scott Field -an attorney, member of the DC bar- was appointed by the US trustee, and the 11 USC # 341 creditors meeting was held on May 1, 1996. Petitioner was questioned by Mr. Field , and later that day he filed the interrogatories regarding "the bank claim " that he had inquired about (App. 2) On the same day of May, 1 1996 he also filed a "No asset report" (App. 3) in which he represented to the court that he had done a very thorough and diligent investigation in to this case, made no distribution, and wishes to be dismissed as there is nothing further for him to do in this matter. On May 31, 1996 the Appellate Division 4th Dept. of New York State Supreme Court located in (App 4) Rochester New York, reinstated the bank claim, in a published decision. On July 7, 1996 the bankruptcy court in Greenbelt Maryland discharged the debts, and closed the case, and dismissed the former trustee Field. (App. 5) The assets were all abandoned by the former trustee Field pursuant to 11 U.S.C. #554, #554 (a) (e). He had already signaled his intent to do so when he filed the no "asset report."

Since the former trustee abandoned the assets, he never contacted the former spouse , who is scheduled as an obligor, therefore they never met. The former spouse an attorney ,scorned and angry that despite all the obstacles he placed in petitioner's path ,she managed to divorce him anyway, also he had been disbarred for awhile for stealing client's funds -in addition to petitioner's, -and ordered to pay restitution to the New York Sate Attorney Grievance Committee in amount of almost $100.000 because the committee had compensated the clients, contacted former trustee Field on April 25, 1998 almost two years after the case was closed and told him some lies regarding the bank claim, (App 6) that it was improperly scheduled , and promised him a bribe if he sought the reopening of the case to harass the petitioner. Field of course had a couple of options to verify this information and not act reptilian ,and to tell the truth that he no longer had any standing. But he did not. The idea of a bribe was too seductive. On April 28, 1998 former trustee Field Esq. filed a motion to reopen the closed case. (App. 7) Almost every word in that motion is a lie to the court and a fraud., which leads one to wonder: does the court not care, is the judge inattentive and feeble, or do some people have privileges. He represented himself as the "trustee" a brazen lie by an attorney to the court He was not concerned that bankruptcy court judge Kier would say: "didn't I dismiss you from this case two years ago, so who reinstated you"? "Or if you are the trustee how come you are seeking reopening?" Being a trustee implies an open case? how come you are seeking reopening? In his motion Field said the reopening is on behalf of an "interested party" ; in bankruptcy reopening may only be on behalf of a creditor or a debtor. The scorned former husband was neither. The court, judge Kier never asked about it. Field stated there are <u>additional</u> unscheduled assets of the estate. He was silent about the abandoned estate, was silent about not having contacted the former spouse two years before On May 7, 1998 the bankruptcy court reopened the case (App 8)"to administer the <u>additional assets</u> are property of the estate. This was all ex parte of course, and petitioner was quite angry at the reptilian former spouse, and having to be in his presence again, involved in legal proceedings with him. 11 U.S.C. # 5010 holds that in a reopened case nothing gets put back into the estate, and no trustee gets hired until there is an evidentiary hearing., and the court ordered it, but Field was rehired on June 24, 1998 by the US trustee, "a good friend" and it was made retroactive to May 7, 1998. (App 9) .

The rehiring of former trustee Field Esq. is certainly evidence that when he sought the reopening he had no standing, and lied to the court about being "the trustee". After consultation with Washington D.C. counsel who explained that these sort of " reopenings " without standing and without an aggrieved party are thinly disguised ambushes(extortions)for money, who advised to either pay him "going away" money or convert to chapter 13 to be free of him. The latter was the option chosen and a conversion motion was filed on August 28, 1998, (App 10) granted by the court on October 28. 1998.(App11) While the plan and details were being put in place, a personal tragedy had arisen in petitioner's life that required her immediate relocation to Northern California. Petitioner's only sibling an older brother, had been unexpectedly diagnosed with a fatal illness in a terminal state and petitioner wanted to be near him, and help his wife and child save or prolong his life. By December 31, 1998 petitioner had to be gone from Maryland, and therefore sought the assistance from the bankruptcy court to speed up the confirmation process by that date. (App.12) The court refused. (App 13). Thereafter, desperate to leave , believing a "court is a court", a belief cultivated and nurtured in society since the beginning of civilization and that judging whether biblical, tribal or the judging of the head of state , or pies at a country fair, or the judges at Nuremberg, and based on petitioner's experience with the courts, in a professional role or a litigant, petitioner requested that for the final confirmation the case be transferred to Northern California , as it would be very burdensome to have to return to Maryland at this time. Inexplicably , the bankruptcy court in Maryland scheduled a hearing in January20, 1999 and one on February 25,1999 both of which petitioner could not attend and the court excused her appearance. In an ex parte proceeding on February 25, 1999, Scott Field, using the false information given him by the ex husband ,lied to and deceived the court again and alleged to the bankruptcy court - judge Kier that petitioner had not properly scheduled the bank claim, and ask the court to vacate the order converting to chapter 13 and return to the reopened chapter 7, all this without petitioner being present, without her knowledge , or prior notice that an ex parte proceeding would be held. The court obliged him , reconverted to the reopened chapter 7, and forwarded the case to the Oakland California, bankruptcy court on or about March 5 1999. Petitioner's sibling died on March 14, 1999.

The Oakland corrupt , abusive, lawless "bankruptcy mafia" Randall R. Newsome, Richard J, Spear and Dennis. D Davis The depraved predatory acts can not be overstated.

Voluntarily transferring this case to California was the single worst decision of petitioners life. Petitioner trusted the judicial system and government which has a responsibility for the well being of all citizens to protect them from bad food, bad medications, bad physicians, bad roads, but apparently does not protect from monsters that are on the public payroll. These monsters are not tall, green and slimy, but rather are short, balding wear business suits and black robes.

Although the decision by Judge Kier was wrong, abusive, violated petitioner's Constitutional rights to due process and equal protection and needed to be appealed, petitioner was in no position to do so because she was emotionally too distraught, and could barely breathe. But that was just the signal for the predators: Newsome Davis and Spear to exploit this prey. That is what depraved predators do. (App 14) They jump on the prey.

As soon as the case arrived in the office of the bankruptcy court, it was renumbered and was renamed . It was put in Randall Newsome's "in " box. Immediately **Richard J. Spear 's** name was placed on it "as trustee" Richard Spear , an attorney is not a trustee: he is an" illusionary or phantom trustee" He is a broker, procurer, salesman -some use a less gentile title- of bankruptcy cases He has an insider connection , and for more than 30 years his name has been placed on 2000 -2500 cases per year, about 200 per months , and a career total easily of 60.000-75.000 bankruptcy cases wherein the estates were plundered by him and his associates. C.F.R. 58.3 calls for (App 15) a private trustee to serve for one year only , and the skills and education requirements are modest , thus 25% of the population would qualify, and even though the code and rules call for equal opportunity in hiring, how can this be met when one person has a special section in the bankruptcy clerk's office, a government space for his private business. On information that is credible though not yet verified by petitioner, Richard Spear's favoritism and control over the cases and his access is not random, is not "sex, drugs and rock & roll" because he is 78 years old, and avuncular, but rather it is **money: bribery.** He lies well ,which must be a requisite for his involvement in the process. Spear parcels out the bankruptcy cases -sells them is more appropriate to a few favorite

lawyers and law firms who do work on the case if required, but first and foremost they assure him the trustee fee, allegedly kickbacks, and generally plunder the estate He personally does nothing further. Just collects money. He has become a multimillionaire from his "trustee" selling and brokering business. Even though the bankruptcy rules 11 USC #5010 calls for an evidentiary proceeding in a reopened , case before any other arrangements ,it did not happen here. Spear sold this matter to an attorney named **Dennis D. Davis ,** who is considered the most unethical , deceptive and disliked attorney in the San Francisco Bay area. His mendacity and abusive ignominy knows no bounds. He is an equal opportunity crook, brazen lying and deceiving the courts as freely as anyone else. In a case titled *Re: Boyd 243 B.R. 756 (9th Cir 2000)* which was an appeal from a bankruptcy court to the District Court in San Francisco and District Court Judge Breyer , in which the debtors claimed as exempt a $750.000 retirement annuity, and Davis's client objected to same, but Davis neglected to file the objection to same within the required 30 days. But he proceeded anyway knowing he is committing fraud and deceit of the opponent and on the court. There were negotiations, motions, settlement talks, Davis accused the Boyd's of fraud, while his was the biggest most brazen and shameless, until accidentally uncovered by opponent's counsel. The court was outraged , of course dismissed Davis's case instantly and berated him and called him unfit to practice law .But Davis is the favored and house favorite of judge Randall Newsome of the bankruptcy court, and has full reign of the bankruptcy court. The ignoble judge **Randall R. Newsome** is a depraved predator unfit to be called judge, unfit to be employed in that position. There are numerous complaints about him from attorneys and pro se litigants to the Judicial Council of the Ninth Circuit, which makes excuses for him It is as if there is trove of excuses all ready to go, depending on the substance of the complaint , albeit all with the same purpose: cover up for him. One is a reported case *.In Re: Charge of Judicial Misconduct" 62 F 3rd, 320 (9th Cir 1995).* The complainant an attorney, law professor, author named Morgan King, with whom petitioner had spoken. The substance of the complaint as reported: that Newsome is abusive, practices law, argues for the side who is his favorite, does not let others speak, did not let this attorney speak to represent his client, uses legitimate bankruptcy estate money to reward those he likes and more.

The complaint also describes how judge Newsome gossips with other judges about persons he does not like. There is no denial of the allegations as being untrue, there was just a lot of diversionary explanations for his conduct. Newsome acknowledged that he did not let counsel speak and present his argument, because " he knew what counsel was going to say" What nerve, what impudence ! He is a mind reader as well: he knows what counsel is going to say before he says it. Isn't it his job , isn't Newsome being paid to listen? Yes-but he has chosen no to. And as to the complaint that Newsome has violated the Code of Judicial Ethics, the Judicial Council had a rather silly excuse by saying :"well judicial ethics are nice , and aspirational". The Judicial Council needs to take seriously the complaints about Newsome. Had the Council done so in 1994, when the complaint was filed, Newsome might not have been there to conspire with Davis to, bully , insult , hunt and terrorize petitioner. to enable him to steal her assets.

After the present case was sold by Richard Spear to Dennis Davis in early March 1999, Davis wrote petitioner a letter asking her to turn over all her assets to him. In early April in a telephone conversation, Davis informed petitioner, that all her assets belong to him. To petitioner's comment that this is a decision for the court to make. His response: "I speak for the court" . While noticing that Newsome had not scheduled the "5010" evidentiary proceeding, petitioner prepared a motion to reclose the case,(App. 16)which was to serve as an evidentiary hearing , because the case was reopened almost one year earlier and the 5010 hearing had not taken place. It was filed on April 21,1999 When petitioner told Davis about this motion, he said "he was certain that this motion would not be scheduled." He was right it was never scheduled. Newsome' and Davis's conspiracy to steal petitioner's assets was adverse to facts. judge Newsome had discussed with Davis ex parte whether to schedule the motion, and they agreed not to. the agreement regarding petitioner's assets had already been made. petitioner informed Davis that she was emotionally drained, would travel to the east coast to be with family and would not be available until early or mid June, Davis responded with "I don't want to wait" There was no pretense: this was about him, petitioner's assets , Newsome and Spear as the silent coconspirator. In petitioner's absence Davis prepared four motions all dealing with the assets.

Petitioner did not have counsel had not had an opportunity to seek counsel, and could not respond to those motions. In the interim Davis also scheduled a hearing for June 2, 1999 to order petitioner to turn over all her records. Petitioner had returned briefly to her home and found all these pleadings, realizing that her simple request to transfer the final stages of a case in a court have brought her in the clutches of an abusive mafia like gang, notified the court she would not be available on June 2nd for a hearing, and also filed a motion pursuant to 11 USC 707 to dismiss the chapter 7 petition (App 17) and a motion pursuant to 11 USC 727 to vacate the discharge (App18).By happenstance there was a substitute judge for this hearing :a judge named Montali of the San Francisco bankruptcy court who asked Davis why petitioner was not there, and Davis replied "he had no idea". Judge Montali also mentioned the motion to dismiss , to which Davis replied : "that petitioner does not understand (App. 19) she does not mean that" That was the last time there was any attention paid to these motions. They were not scheduled, they were not granted , they were not denied to make them appealable. Newsome and Davis needed to keep petitioner in the system, to be able to extort and steal her assets. On June 10, 1999 petitioner wrote a letter to judge Newsome,(App. 20) complaining of her lack of access to the court system, -retrospectively this seems incredibly naive-while Davis's access is unlimited. Petitioner had at the time not comprehended the endemic sleaze and corruption of this court and the cronies. He never responded, and nothing ever changed. At the first hearing in judge Newsome's presence , several events transpired which were repeated at each proceeding. Judge Newsome practices law, and speaks for Davis. He makes every argument for him, and throughout this endless ordeal, petitioner has never heard Davis speak a full sentence. Newsome only speaks to his cronies, and so favored. To the rest he sneers. To petitioner he sneered, informing her that he intends to take her assets and give them to Davis. Petitioner was stunned-who would acknowledge something like that in advance. Petitioner was not clear whether he was under the influence of illegal drugs or alcohol, or has a personality disorder. In the months that followed nothing changed: petitioner was never heard, the demand for her assets and records continued.

Petitioner was unable to obtain counsel, even though she had contacted 10 different attorneys , -all male because judge Newsome is sexist and especially abusive and demeaning to women.- and all declined. One was president of the Bar Association section on bankruptcy in one of the bay cities. Once explained, petitioner understood that these people did not want to get involved with this "gang" of Newsome, Davis, and Spear. Obviously they were local and it could interfere with their earning their living. Petitioner who was the prey for the predators and bounty hunters, sought assistance from other courts ,but as this Honorable Court is aware, once he created jurisdiction for himself, there would be no other intervention. Newsome and Davis hired a burglar -stalker cum investigator who trespassed and burglarized petitioners home, and stole all her personal records. Later on when she needed some, she had to send a printer to copy her own records. He spent many hours stalking petitioner(App 21) The burglar alleged that he had taken the records out of the trash to invoke the curbside rule, which was a lie by the burglar and judge Newsome sneered at petitioner saying that "the burglar took the records out of a dumpster at petitioner's apartment, another lie by Newsome. Petitioner resides in a single family home, a private community (App22) where there are no apartments, no municipal services, no trash at the curb, the services are all paid for privately by the property owners, the trash is picked up from an attached to the house, utility shed.. There is one street in and out , the rest are cull de sacs . Being on the premises is limited to residents and invitees. Petitioner has reason to believe that it was arranged that the burglar would use an electronic devise to open the garage door .A judge even if only a hired one, an Article I judge participated in the hiring of a burglar, and covering up the crime! Petitioner filed a police report with the Walnut Creek police department, which contacted Davis, who told the detective that petitioner had taken bankruptcy money, so he had to do it. Newsome demanded that petitioner hand over to Davis all her assets in the Max Family Trust which held petitioner's IRA, exempt under Maryland law which is the law of the case, also the title to a vacation apartment in Florida, also exempt under Maryland law as a homestead, and some remnants of the marital distribution. These were all tax exempt or tax deferred assets.

It must be remembered that there had been no fact finding or evidentiary proceeding , no appellate review, just Newsome and Davis saying these assets belong to Davis, and petitioner was the victimized prey.

On January 28, 2000 Davis told petitioner that if she paid him and paid Spear, they would "go away" , and this way petitioner would be able to keep some money for herself. It did not happen. Since petitioner did not hand over the assets when the crooks demanded , in June 2000 she was lured into Newsome's presence , detained by him overnight . On July 1, 2000 she turned over securities which at the time had a value of $ 450.000-$475.000 to Davis. (App. 23) . While petitioner attempted to deposit them in some fiduciary institution, Newsome would not agree. The reason is rather transparent: he did not want petitioner to have an opportunity for an interim legal challenge. Thereafter in a chance encounter with an attorney who was the opponent to Davis, in the massive attempted fraud by Davis on him and the District Court Judge Breyer *In Re: Boyd 243 B.R. 756 (9th Cir. 2000)*, he agreed to represent pettitioner. But petitioner now lacked the funds for a retainer . In a motion to Newsome he asked him to release some petitioners assets to him for legal fees, to which Davis - after all he had been promised all of them by Newsome- objected and Newsome denied. That was the end of counsel. The only way out was a motion for summary judgment. Newsome would surely decide in favor of the cronies, but it would provide a way out of his proximity. In October 20, 2000 petitioner filed the motion for summary judgment and Davis cross moved. As expected on December 18 , 2000 Newsome came prepared and read some of his inaccurate drivel, and held that the assets in the name of The Max Family Trust belong to Spear and Davis. (App 24) To cover up their extortion, theft and perfidy , Newsome and Davis always referred to it as the "estate". Petitioner had frequently objected to that, because it was a lie and a cover up for extortion , but Newsome sneered some words of denial. When petitioner had unraveled the corrupt arrangements surrounding Spear, Davis and Newsome she was shocked, and naively could not believe that Newsome is a knowing participant. When she confronted him with it , Newsome sneered a response stating that " everybody around here does it".Petitioner asked Newsome to recuse, Davis said nice things about him, he did not go away , retaliated against petitioner, and used $2.200 of petitioner's money to pay Davis for defending him.

This decision was appealed to the District Court, where judge Chesny affirmed, It was appealed to the Ninth Circuit Court of Appeals. Cases **No: 01-16250 & 01-16270.** Thereafter petitioner was in Newsome's proximity once more: on January 30, 2001 at which time he uttered a threat against her. The event was a "pretend" inquiry into a lie, deceit and professional ethics violation -not the first one to be sure by Davis . Davis told Newsome it was not him, but a 38 year old woman partner, an attorney for a dozen years. Newsome said "oh, it was just a mistake by a young associate" This was all prearranged, and she did not answer relevant questions anyway. It was of no consequence another cover up. Davis could have said "the tooth fairy did it." Hearing the threat from Newsome, and recalling a warning offered to petitioner by two attorneys walking to the parking garage : " to watch out for Newsome, he is evil and has the guns literally and figuratively, and can cause major harm", petitioner has not been in his proximity ever again. . For a brief time thereafter petitioner had appellate counsel, who was harassed by the opponents. They could only victimize petitioner for their own benefit if she is without counsel, and there is no witness. Newsome proved to be abusive to counsel as well. Under Maryland law on exemptions an IRA is exempt from bankruptcy and there is a homestead exemption. The same is true under California law, but Maryland law supersedes as the law of the case. Counsel moved for this money exemption over $275.000 -. (App 27) actually the IRA was significantly more . Not unexpected opponent Newsome denied . It was appealed to the District Court and again judge Chesny affirmed. It was appealed to the Court of Appeals **No: 02-16695.**The Florida apartment titled in the name of trust is exempt under the homestead exemption. But since petitioner has been paying all the expenses for it, like mortgage, taxes , condominium fees, insurance and more , petitioner sought an administrative fee. The apartment is rented occasionally, which ameliorates the costs somewhat, but still if the opponents are to have the apartment, in the year 2001 this administrative fee amounted $44.500. Not unexpected Newsome denied, and it was appealed to the Bankruptcy Appellate Panel , which affirmed . Thereafter it was appealed to the Court of Appeals.
Case **No: 01-17516.**

Petitioner's opponent scheduled a hearing for April 25, 2001 and submitted an interim fee award request for $289. 745 . This fee request covered about 120 pages. The fee request is deliberately spread out to be confusing so that a reader would not notice that it is all creative writing, and they had to fill up pages to provide a justification and alibi for Newsome. There is triple, quadruple billing for the same thing , and it is all fake. There is about (App 28) $150.000 for a trial.-there was none. Abut $50.000 for tracing, and on and on such outrage. Newsome used petitioner's money to pay Davis about $7.500 for keeping the ex husband informed about petitioner. Petitioner has had numerous orders of protection against him - he had been arrested in Florida for stalking and harassing , here he could be informed without risk. Since there are still issues with the former spouse, he or his counsel would contact Davis, saying: what do you have on her that I can use?". Spear who had spent about 80 minutes in this matter, claimed $50.000. The stalker-burglar was also paid with petitioner's money. At the April 25, 2001 hearing, petitioner was fortunately represented by counsel. Listening from an ante room petitioner was shocked how abusive, and dismissive judge Newsome was to counsel, and his plain despicable demeanor. Newsome continuously argued on behalf of the opponent. The opponent was silent. Newsome repeated to counsel that the first time he saw petitioner, he told her that her assets would be given to the cronies. Even though petitioner's fee request was not calendared for that day ,Newsome said he had already decided it. he arrived with the decision. Counsel argued about the law and the legal requirements notice before and a hearing: Newsome made fun of that; eventually he said ok. submit papers by May 16, 2001 regarding the administrative fee which was another of Newsome's brazen and shameless lies, because he signed the order denying the administrative fee that day. It was appealed to Bankruptcy Appellate Panel, which affirmed , and it was appealed to the Ninth Circuit Court of Appeals **No: 01-17516 On that day April 25, 2001 , judge Newsome saying that the "estate had waited long enough "ordered petitioner's securities sold which generated $368.200 because of the drop in the stock market. Of that Davis received $. 289.500 , Spear $50.000, and the creditors who were discharged many years ago received 0. This was as brazen a case of theft and extortion as one is likely to find in a criminal matter,.**

In addition to extorting and stealing petitioner's assets, this bankruptcy mafia or gestapo consisting of opponents Newsome* and Davis have caused great harm to petitioner's personal life, family life and professional life. Some of it is even to painful to think about. Newsome and Davis with knowledge that it is false, that they are lying intentionally and maliciously informed petitioner's grown children, her daughter a distinguished nationally known physician, married to a college dean and her son an attorney partner in a New York City , married to an attorney , that their mother is a criminal and committed bankruptcy fraud. Just as petitioner did not know what sort of crooks and depraved predators she would encounter in opponents Davis and Newsome, others can not imagine that either. Opponents Newsome and Davis have insisted in falsely ,with knowledge that they are lying ,maliciously and deceptively and with the intent to cause harm, of asserting that petitioner is currently in bankruptcy . This of course has interfered with all aspects of life : entering into contract, business, credit, social standing, litigation , social standing. The opponents also invaded all aspects of petitioners privacy. All these were deliberate acts of intimidation as well as gross malicious prosecution, to instill fear in petitioner , and to show petitioner that the opponents prevailed. They caused all this harm simply because they could.

All the decision by opponent Newsome have been appealed and are subject to this petition for certiorari, such as <u>the extortion of</u> petitioner's assets. . The <u>giving away</u> of petitioner's assets to Davis and cronies was rejected for appeal, as not being ripe for same, because the order was titled "interim". This Honorable Court is asked for a Writ of Certiorari to the Ninth Circuit Court of Appeals to return petitioner's extorted assets , because petitioner's assets were unlawfully extorted without right or privilege prior to the "give away".

*Despite being a federal employee and hired as a judge, he is really " an opponent on the public payroll , who practices law all the time on behalf of those favored by him. That is the substance of the reported complaint about him in *Re: Charge of Judicial Misconduct" 62 F 3rd, (9th Cir. 1995).* He should have been gone a long time ago. Throughout the statement of facts petitioner referred to him as "judge" only for clarity. He is unfit to be a judge.

Discussion

This Honorable Court has agreed to review a bankruptcy matter in the next term. Petitioner prays that the Court will grant the writ of certiorari covering another pressing matter: the corruption within the bankruptcy system, judges , attorneys , trustees.

This Court will review a bankruptcy matter next term, regarding an issue not on point with the present matter. But there is another issue of conflict within some bankruptcy courts, attorneys, debtors , creditors, and the United States Congress: the corruption of the system. Where the system is corrupt, is does not serve the people it is designed to serve: debtors and creditors , but rather the "gangs" of preferentially hired trustees, attorneys, and some judges .A bankruptcy "mafia" One can not speak about corrupt courts in any other medium, not criminal court, not tax court, not family court ,not civil courts, because they are not. the corrupt bankruptcy courts appear to function in a vacuum where they do not expect accountability. **This matter is about such a court.** The Oakland California bankruptcy court and three opponents: he ignoble judge Newsome, the phantom "trustee" Spear who sells his name, and insider connections ,and his stand in Dennis Davis a real swindler. Bankruptcy is a protected right ; the "mafia" is not.

Petitioner was denied due process and equal protection rights, was denied the rights to an unbiased court, and was subject to an illegal and unconstitutional bill of attainder.

Petitioner was victimized by gross, brazen and repeated violations of her Constitutional rights There was no trial , no evidentiary proceeding, no access to the courts, denied any access by a depraved predator judge Newsome, never listened to, there was no fusion of any legitimate interest or standing in this matter , with the case itself. The first time petitioner encountered Newsome he said he would take her assets and give them to his cronies Spear and Davis, and he did that. Rights are irrelevant to the mafia. In *United States v Krass, 409 US 434 (19730* this Honorable court held that "bankruptcy has no rights ; the rights belong to the individual. This Court has also defined these individual rights as a property interest encompassed in the Fourteenth Amendment right to procedural due process for a property right already acquired. *Board of Regents v Roth 408, US r64 (1972), Perry v Sinderman , 408 US 593 (1972) , Fuentes v Shevin, 407 US 67 91972) , Goldberg v Kelly 397 US , 254 (1970).*

The holding in these cases is that before property or a property interest is seized , fundamental due process requirements demand a hearing like a mini trial with witnesses and the opportunity to cross examine .In the present matter there has been no evidentiary hearing, no mini trial, no witnesses and no evidence . Just extortion of petitioner's assets and theft. In *Fuentes* supra the Honorable Justice Stewart noted: " no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process ,had already occurred. ". The actions by the opponents violated due process and the equal protection clause. In *Bush v Gore 531 US 98, (2000)* , this Honorable Court held that no "amount of excuses may justify a due process violation. "The action by the "bankruptcy mafia" and the ignoble Newsome, are the equivalent of a an impermissible and illegal bill of attainder. It is inexplicable that the reviewing courts in their haste to affirm each other and the lower court, whether or bias or disinterest, instead of acting in defense of the Constitution and the Bill of Rights, chose to ignore the gross violations of petitioner's rights, and what resembles a bill of attainder. In each pleading , in each brief petitioner pointed out the violations of her rights , that there had never been an evidentiary proceeding , that opponent Newsome did not read the United States Constitution, but rather the Rules of the Third Reich, and that he also violated the bankruptcy codes. An unbiased court? Opponent judge Newsome himself would agree that he is biased against petitioner,. He is also a malicious, sexist, lawless ,antisemitic, abusive , corrupt , predator. In *Tumey v Ohio , 273 US 510 (1927)* this Honorable Court held that "the rule has been settled for almost a century that a party is entitled to an impartial judge, no matter what. Did not happen in the matter at instant. **The assault on petitioner's Constitutional rights, the judicial abuse and misconduct against her , the illegal bill of attainder, the extortion and theft of her assets impoverishing her, merit the assistance of this Honorable Court through a writ of certiorari.**

Despite the false allegations by the profiteering opponent, there were no irregularities in the scheduling on the chapter 7 petition.

The bounty hunting opponent made false allegations about the assets on the chapter 7 petition. These allegations were self serving because they have a corrupt judge on the team .On the chapter 7 petition (Ap 1) the following assets potential assets and exempt assets are scheduled: The ex husband as an obligor, the Trust in petitioner's possession, and the bank conversion claim. Former trustee Field, an attorney, member of the DC Bar and preferentially hired as a trustee for more than twelve years told the court that he had diligently investigated this matter (.App 3)

On the same day as the "341" hearing, May 1, 1996 the former trustee filed the interrogatories, describing the " bank claim" which is about - a conversion of$ 96.500 (App.2) belonging to petitioner, dismissed at the time, and of course appealed . On the same day, May 1, 1996 the former trustee Scott Field Esq. also filed a "No Asset Distribution Report " with the bankruptcy court , (App. 3)**advising the court that he had conducted a thorough and diligent investigation into this case, made no distribution, and wishes to be dismissed by the court..** The " bank claim" was reinstated by the Appellate Court on May 31, 1996 .(App. 4) **The chapter 7 case was closed by the bankruptcy court on July 7, 1996.** (App. 5)

The scheduled property , exempt or otherwise , were unequivocally clearly, and knowingly abandoned by the former trustee.

11 USCA # 554 holds that property in an estate at the closing of a case by the court are considered abandoned to the debtor, and are considered administered forthe purpose of 11 USCA # 350.Once abandoned the property is removed from the control of the bankruptcy court and returned to the control of the debtor as though no bankruptcy had occurred. 11 USCA #541 (a), 554. Although filing a "no asset report " by a trustee exhibits the requisite intent to abandon the property this abandonment by operation of law can not be considered final until closed by the court.*Behrens v Woodhaven Ass., 87 B.R. 971 (1988), In Re : Dlugopolski, 67 B.R. 122 91986).In Re: Reed, 940 F 2nd, (1991).* Once an abandonment occurs , it is irrevocable *Killebrew v Brewer, 888 F2nd 1516 (1989) In Re: Enriquez 22 B.R. 942 (1982), In Re: Nebel 175 B.R. 306(1994).*The abandonment is irrevocable even if there is a subsequent discovery that the property had greater value than previously believed. *In Re: Wornell, 70 B.R. 153 (1986).* 11 USCA #554.
The property scheduled on petitioner's chapter 7 petition was knowingly abandoned by former trustee Field. Once the property is abandoned under 11 USCA # 554, the trustee has no further involvement with the property. **Abandonment is irrevocable after one year. *In Re: Ford 159 B.R. 590, (1993).*** Former trustee Field, an attorney, one of those preferrentially hired individuals, who has been a private trustee for about 10 years, despite the rules calling for one year service only, and who is a partner in an accounting firm brockering bankruptcy business, knew all of that- all that there is to know about the process. Therefore he acted deliberate and with knowledge in the abandonment.

The case was wrongfully reopened through fraud and deceit , and a promise of a bribe, violating the bankruptcy rules on reopening, on laches , and petitioner right to due proces: notice and an opportunity to be heard.

When former trustee Field abandoned the possible assets of the 7 estate, and the court closed the case on July , 1998 the abandonment was irrevocable pursuant to 11 USC # 554. Pursuant 11 USC # 541 (a) and # 554 ,the abandoned property is returned to the debtor as if no bankruptcy had occurred. The former trustee Field knowingly, intentionally and clearly abandoned the property. In abandoning the property and what was scheduled on the petition (App 1) former trustee Field, abandoned contacting petitioner's scorned and angry former husband who is listed as an obligor , as he was indebted to petitioner for a significant sum of money. Had he done so they would have known each other. 11 USC # 350 holds that a closed and administered bankruptcy case may be reopened to accord relief to the debtor or for other causes. It is inconceivable that other causes includes a scorned , angry, despised angry former husband who is by then a disbarred attorney, who promised former trustee Field a bribe to seek reopening of the closed case for harassment purposes. For him -less threatening than stalking. On April 27, 1998 (App6) the ex spouse sent a letter to Field -which they both knew was false- telling Field that when petitioner claimed the on the petition two years before that the "bank conversion claim" was dismissed , it was really not. (App 4 it is a reported case when it was reinstated on May 31, 1996). On April 28 , 1998 former trustee Field filed a Motion to reopen(App 7) in which he identified himself as "the trustee" despite having been dismissed almost two years before , and having no standing, and asked that the discharge be vacated Petitioner had no notice. Field told the court that he is acting on behalf of an interested party, and that there might be **additional assets of he estate.** There was some marital personal property left behind in Buffalo NY, but that was subject to the court's jurisdiction there. Did not belong to petitioner. NY is not a community property state. **Former trustee Field did not make any claims or allegations about the scheduled property on the petition.** The bankruptcy court in Maryland, judge Kier, never scheduled a hearing, never asked former trustee Field how come he is "trustee" in case that he closed two years before and dismissed him, who made him trustee again, and if one is "trustee" that means that the case has not been closed, so why reopening? Is 'trustee" a honorific title?

The case was reopened on May 7, 1998 (App 8) to administer **"the additional assets of the estate.** This reopening has been prostituted by the Oakland bankruptcy court "mafia or gang " and turned into an instrument of terrorizing this petitioner for the past five years unlawfully stealing her assets , impoverishing her and giving them to the bounty hunters. The Honorable Justice Clarence Thomas has noted in *Taylor v Freedland & Kronz et al. 503 US 638 (1992)* , that bankruptcy court judges give these private trustees, a "second bite" of the apple. **This reopening represents that second bite.** The case was reopened through deceiving the court , even if the court did not mind being deceived , as long as the deceiver was from an approved list of deceivers. As a safeguard against bankruptcy cases existing in perpetuity, the doctrine of laches operates as bar against reopening. 11 USC # 350 (b). Abandoned assets are administered for purposes of #350. Congress has enacted a statute which makes even a fraudulently obtained discharge uncontestable after one year. 11 USC # 727 (e).
In *Re: DeVore 223 B.R. 193 (9th Cir. BAP 1998)* the issue of notice of the intent to seek reopening and motion to reopen is of concern to the court and the requirements of due process. The court held that notice by first class is sufficient. But in the present matter there was no notice, and no time and opportunity to be heard and to respond. Therefore petitioner had no prior knowledge of the reopening, no opportunity to respond, and was not heard: the reopening was ex parte. In *DeVore* supra the court further held that the reopening of a case even for a valid reason , does not negate the abandonment, and the abandoned assets cannot be brought back into the estate. The court-the Bankruptcy Appellate Panel held that reopening of a closed case is a mere ministerial act, allowing the files to be retrieved from the stacks of closed cases.
In *Re: Germaine 152 B.R. 619 , (9th cir,. BAP 1993)* the court held that reopening by itself has no legal significance , and determines nothing regarding the merits of the case. The points made by the court in *DeVore* are fully applicable to the present matter: all the assets were listed on the schedules and known to the trustee when he filed the "no assets report", and were abandoned. In *DeVore* the trustee tried to say to the lower court that the reopening was for "newly discovered assets of the estate " something he never repeated to the Appellate Panel. This is exactly what former trustee Field had said and done in the present matter. The holding of *DeVore* **is that the order of reopening does not bring abandoned assets back into the estate. The Oakland bankruptcy mafia needs to know that, and return petitioner's extorted and stolen assets.**

The doctrine of laches.

The equitable doctrine of laches has as its goal the prevention of prejudicial delay in the bringing of a proceeding. 11 USC# 350 (b) holds that a case may be reopened to to accord relief to the debtor or for other cause. The *Committee on the Judiciary , Senate Report No. 95-989, subsection (a)* provides that though the court may permit reopening of a case , laches may constitute a bar to an action that has been delayed too long. In *Beaty v Selinger 306 F 3rd 915 (9th Cir 2002)* the Court of Appeals identifies two fundamental tenets of the bankruptcy law. The first is -quoting this Honorable Court in *Katchen v Landy , 382 US 323 (1966)* " a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period" The second is the understanding that a bankruptcy court is a court of equity and should invoke equitable principles and doctrines , refusing to do so only where their application would be "inconsistent" with the Bankruptcy Code. *In re Myrvang , 232 F3rd , 1116, 1124 (9th Cir 2000)* (citing *SEC v United States Realty & Improvement Co. 310 US 434 (1940))* Bankruptcy courts are "essentially courts of equity. "*Katchen* supra .These two principles combine to create a presumption that the equitable doctrine of laches , which has as its goal the prevention of prejudicial delay in the bringing of a proceeding , is a relevant and necessary doctrine in the bankruptcy context. The doctrine of laches is primarily concerned with prejudice. The matter at instant was bared from reopening by laches. The former husband was scheduled on the petition as an obligor therefore the former trustee Field had not only an opportunity but also a duty to contact him and get his story. He did not , and knowingly abandoned the assets.(App 3) His motion to reopen the case ex parte (App 7) was fraudulent. He lied to and deceived the bankruptcy court(even if the bankruptcy court did not mind being deceived), he had no standing, and is an all around crook. He caused harm to petitioner. Laches focuses on harm caused by delay . *Maksym v Loesch 927 F 2nd 1237, (1991).* Phrases such as "at any time' that attach to bankruptcy rules does not mean "at any time no matter what and no matter how inequitable. *In Re Beaty 268 B.R. at 849 (BAP).* **Petitioner has lived a more than five year nightmare since that fraudulent reopening, and had her assets stolen under the guise of authority. That is prejudicial and bared by laches.**

The Court of Appeals misinterpreted, misstated, misapprehended and misapplied the facts and the rules on abandonment of assets and closing of bankruptcy cases , the rules on reopening of closed bankruptcy cases, while trivializing the facts in this matter to support a predetermined agenda based on bias.

The assets listed on petitioner's asset schedule were unequivocally and uncontrovertibly abandoned by the former trustee. There are numerous facts in evidence to support this statement., to merit space to state them all. The former trustee knew it, and everyone reading the documents knows it. In the 50 word or so opinion by the Court of Appeals Panel , the Court stated: **Even if we were to find that the assets were abandoned , the case was properly reopened, therefore it does not matter. Besides being patently false,** this is an outrageous statement of disregard, disrespect and bias, and factually ridiculous, analogous to the medical model holding that since an individual might die in ten or twenty years anyway, dying or being murdered now is of no consequence. Petitioner believes that the Court of Appeals has a duty to review each element of a case before it, and make an accurate and definitive finding for each issue on appeal. **The assets were abandoned, and the case illegally, fraudulently and improperly reopened despite the Appellate Panel's statement.**(a) Had former trustee Field Esq. not abandoned everything in the case, he would have known the former spouse who is listed on the schedule as an obligor, and the former spouse would not have had a reason to contact former trustee Field two years later.(App 6) (b) When Field filed the Motion to Reopen (App. 7) he did not allege to the court any infirmity in the scheduled assets or potential assets. (c) Field lied to the court stating he is the trustee, when he was not having -been dismissed two years before.(d) When Field lied to the court and represented that his reopening was on behalf of an interested party, the court had reason to assume it was the debtor or a creditor, not a bribe paying false informant. (e)The bankruptcy rules limit reopening to one year after closing (f) thereafter the doctrine of laches applies. (g) to seek reopening of a case one needs standing ,as in all legal matters-to be directly affected - which in bankruptcy is limited to the debtor or in some cases a creditor.
(h) a scorned despised lying ex spouse that offers a bribe does not qualify for standing, (i) The order reopening did not authorize the "second bite of the same apple " but rather authorized the administration of additional assets . **The Court of Appeals biased statement, regarding abandonment and reopening was frivolous , imprecise, and inaccurate.**

The Max Family Trust was fully scheduled on the petition, was abandoned, but is also exempt under Maryland law.

The State of Maryland is one of many states including California that do not participate in the federal bankruptcy exemptions, but rather has it's own.(App 27) and Maryland law is the law of the case. What is exempt from any judgment and the bankruptcy estate is an IRA , or some other retirement plan, and there is a limited homestead exemption. Petitioner's IRA was titled the trust, as was the apartment in Florida-the equity was minimal, not above the permitted exemptions. Both of those along with another marital distribution came to petitioner pursuant to a Domestic Relations Order of the New York State Supreme Court, County of Erie . Pursuant to the Federal Domestic Relations Tax Reform Act of 1984 all of the above mentioned assets were free of tax obligations by petitioner, therefore suitable to be in the same name, while separately identifiable. When counsel filed the chapter 7 petition on March 26, 1996 he assumed the exemption. In *Taylor v Freedland and Kronz , 112 S. Ct 1664 (1992)* this Honorable Court held that assets are exempt if the debtor thinks they are exempt, even if not exactly stated as exempt , but the totality of circumstances so suggests and that the filer believes they are , therefore they are .Petitioner believed they are, therefore they are .After reopening there was no allegation from former trustee Field about the trust .The ignoble judge Newsome had promised his cronies-bounty hunters the assets from the trust, (whether he personally benefits petitioner does not know as yet) so he just started saying that the trust was not scheduled, petitioner committed an illegal act , therefore the assets belong to the cronies. This without any evidentiary or fact finding hearing, with witnesses -a mini trial , just pronouncements. This is an illegal nazi like seizure , a violation of procedural due process entitlement .*Kelly v Goldberg 397 US 254 (1970), Fuentes v Shevin , 407 US 67 (1972),Perry v Sinderman 408 US 593, (1972), Board of Regents v Roth , 408 US,564 (1972).* The predatory bankruptcy mafia concluded that petitioner, a pro se litigant, without counsel, new to the state , in personal deep despair , was an easy prey for extortion and theft. Robbers in dark alleys, employ the same methodology to locate their prey. There was no wrong doing on the part of petitioner, nor is there such an exception in the statutes. Since the founding of the Republic states have had their own laws to be followed. Starting with *Section #34 of the Federal Judiciary Act of September 24, 1789* , and *Erie Railroad v Tompkins, 304 US 64 (1938).*In *Swift v Tyson 41 US 1 (1841)* This Court held that judges do not make laws they follow laws made by the legislature.

Exemptions: Maryland and California laws.

11 USC $ 522 provides for standardized bankruptcy exemption. Maryland is one of a majority of states that have enacted "opt -out" statutes. Therefore bankruptcy filers in Maryland are prohibited from claiming the exemptions enumerated in 11 USC #522(d), and must comply with the Maryland exemption rules. Since this case was filed in Maryland , the law of the state of Maryland applies. Pursuant to *Maryland's Code and Judicial Proceedings # 11-504 (h)* **in addition to other , exempts an interest in a retirement plan, qualified under the various tax codes, as amended by the United States Internal Revenue Code in 1994 and various titles, and is mandatory**

11-504 (d) Waiver: A debtor may not waive by cognovit note or otherwise the provisions of subsection (h) of this section.

11-504 (f) any debtor domiciled in Maryland may exempt interest in real property of $3.000 even if the property is located in another state. It is the public policy of Maryland to protect from creditors certain assets set aside to support individuals financially in retirement , and there is no dollar limit on that State exemption. In *Re: Solomon, 166 Bankr. 832, (Bankr. D. Md)* aff'd. *173 Bankr 325 (D. Md. 1994).* Exemptions under Maryland law should be liberally construed . *In Re: Solomon* supra, *Muhr v Pinover, 67 Md 480, 10 A 289 (1887), Darby v Rouse, 75 Md. 26, 22 A 1110 (1891), Fowler v State ex rel Gray, 99 Md. 594, 58 A , 444 (1904).* Debtors who file in Maryland must claim exemptions pursuant to Maryland law . *In Re Canelos , 216 Bankr. 159 (Bankr. D Md. 1997).*The State of California likewise exempts retirement and pension plans and interest in a homestead. The California retirement exemption is likewise not limited in dollar amount , and the homestead exemption is much more generous at least- $45.000.The retirement funds exempted are at times invaded for contemporary use as permitted under the various Internal Revenue Service programs. Petitions may be amended to include previously omitted exemptions or a change in circumstances. Petitioner's IRA titled in the Trust was scheduled on the original petition. Opponent bankruptcy judge Newsome had decided , in response to a summary judgment motion filed by petitioner, just to get away from him, that petitioner's assets in the Max family Trust including her IRA should be given to his cronies something he said he would do the first time petitioner encountered him. To facilitate his misconduct he created two fraudulent constructs. He falsely alleged bad faith and fraud in petitioner's original chapter 7 schedules, even though that was a blatant lie on his part. Those schedules were prepared by a very

reputable law firm in Rockville Maryland that specialized in financial matters including bankruptcy , and the attorneys were presumptively competent and honorable. And the ignoble opponent judge Newsome and his corrupt cronies therefore can ignore the law of a sovereign state, and say that because in his corrupt opinion petitioner did not "properly schedule" the IRA and the trust , therefore her exemption is denied. Although stated before, it bears repeating that at the first hint of an allegation -albeit false-that there was an irregularity in the chapter 7 schedule, petitioner filed a motion to withdraw the petition and vacate the discharge (App 17, 18) which was ignored, not scheduled, not acted upon, and opponent Davis told another court that petitioner does not understand and does not know what she is speaking about. The ignoble opponents : Newsome, Spear and Davis conspired to steal petitioner's assets so she had to remain exactly in the place and position that she was most vulnerable to extortion and plunder. Since there had never been a fact finding or evidentiary hearing in this matter, what the ignoble judge Newsome decided in his bunker was determinative. There is no such preemption or exception in the statute. Nor is there any language in the statute that a bankruptcy judge may decide to extort confiscate and give those exempt assets that belong to a litigant , to his "favorites". What is astonishing and incomprehensible is that the District Court affirmed this. So did the Court of Appeals Panel. There is evidence to suggests that neither the District Court nor the Court of Appeals reviewed de novo, especially in a matter where there is no fact finding evidence , no trial, no proof for the allegations. Just pronouncements. Opponent judge Newsome * had also alleged that because after the chapter 7 case was closed by the court in on July 7, 1996 and petitioner had used funds from the trust and her IRA, which were not taxable to her, she somehow lost her right to the exemption at least in his rule book. In *Re Kim , 257 B.R. 680, (9th Cir. BAP 2000),* the court held that the petition date is the relevant date for determining property of the estate. Subsequent changes in form do not bring the property back in to the estate. The bankruptcy court so held, and the BAP affirmed.

* Petitioner identifies judge Newsome as an opponent, because that is what he is . He practices law, argues the cases , is insulting, abusive, does not allow people to speak . In this long nightmare petitioner has never heard the phantom trustee or his partner-counsel ever speak a full sentence or make an argument. There are numerous complaints about this to the Judicial Council one published *In Re: "Charge of Judicial Misconduct" 62 F 3rd , 320 (9th Cir 1995).* (App 33.) Newsome proved to be a sexist depraved predator who with his cronies caused great harm to petitioner.

In *Re: Arnold 252 B.R. 778 (9th Cir. BAP 2000)* the issue of delay in filing for exemptions was addressed, and the Court held that even where there are creditors , they are not prejudiced by that . In *Dudley v Anderson 249, 249 F 3rd 1170 (9th Cir 2001)* the issue is that the Dudley's had withdrawn $107.000 from their retirement fund, to pay ordinary living expenses , and said they would continue to do so .The Court of Appeals reversed the lower courts alleging that this invalidates the integrity of the retirement fund exemptions , and held that the IRA's were designed principally rather than solely for retirement purposes. **Petitioner's prayer is for this Honorable Court to return her wrongfully extorted and stolen retirement funds and all assets to her.**

The ignoble judge Newsome employed an unconstitutional "bill of attainder "against petitioner. His judicial misconduct.

Since there were no parties with legal standing involved in this matter, the opponents including Newsome with his cooperation and participation all conspired to extort and steal petitioner's assets with Newsome had given himself permission to do that, and to punish petitioner., just as he routinely gives himself permission to practice law and represents his cronies. Newsome's conduct is the subject of many complaints , one is reported : *Re Charge of Judicial Misconduct , 62, F3rd 320 (9th Cir 1995)* .Therefore a review of the record in the present matter ,the overwhelming conclusion presents itself that opponent judge Newsome 's prosecuting, persecuting and terrorizing petitioner for several years , while denying her any and all legal rights was a form of a bill of attainder . That is a violation of the United States Constitution.. While he could not send petitioner to the guillotine, he could steal her assets to deprive and impoverish her, could deny her legal rights, participate in her being stalked and her residence burglarized. He could insult her, falsely accuse her of wrongdoing. This started as soon as petitioner made the colossal mistake of voluntarily seeking a transfer to this court. He announced his plan the first time petitioner encountered him, that he plans to take her assets for Spear , Davis and who knows who else- there are no people of legitimate entitlement, and proceeded to do so. How the District Court avoided addressing this gross abuse of judicial conduct, and how the Court of Appeals ignored it, is incomprehensible. Certainly no one met their responsibilities. Regarding the ignoble Judge Newsome the Court of Appeals in it 's less than 50 word opinion (App a.) noted that regarding the conduct of the ignoble Newsome: petitioner chose to transfer her case there". True petitioner elected to transfer to Oakland not to Newsome, because she believed a court is a court, not that some courts are dens of inequity and employ monsters.

The closed a bankruptcy case was reopened based on lies and fraud, consequently there was no one with standing That represents an Article III violation and voids the decisions therein

Standing in a bankruptcy matter comes from being the debtor or an omitted creditor. The case was reopened on false information to the court, and there was no one with standing there. The court in Maryland gave the former trustee "the second bite of the apple" without meeting the minimum standard of standing. Informants that offer bribes do not count "The very essence of civil liberty consists in the right of every individual to claim the protections of the laws whenever he receives an injury "*Marbury v Madison, 1 Cranch 137, 163 2 L. Ed 60* A court can only act as it is called upon to adjudge the legal rights of litigants in actual controversies. *Liverpool NY & P Steamship Co. v Commissioners of Emigration, 113 US 33.* In *Sierra Morton , 405 727 (1972)* this Honorable Court reiterated the requirement of standing by holding that " a complainant must show a direct and personal harm by the action he or she is complaining about to have standing." Bankruptcy -as this Honorable Court defined it-has no rights ; it is about debtors and creditors. *United States V Krass 409 US 434 (1973)* and standing comes through being a debtor or creditor i.e. a party in interest. Although opponent judge Newsome extorted petitioner's assets through deceptively speaking of an "estate", -he did not want his corruption to be found out too easily- there is no estate, there was no estate. The estate was dealt with more than seven years ago. This is about deceit, fraud and theft. Had there been one they would not have received anything anyway because as this Honorable Court will learn , the large amount of money stolen from petitioner, was all given to the other coconspirators. Whether and how Newsome benefits himself , petitioner does not know. But there was no one with standing to pursue this matter an Article III requirement **Therefore all of opponent Newsome's decisions should be voided, and petitioner's assets returned to her.**

Criminal conduct, the rapacious plunder of petitioner's assets, fraud under the guise of authority.

This case was reopened through fraud and deceit and continued through burglary and terror to criminal extortion and theft. It was a march to steal the money for the cronies. While the corrupt opponent Newsome falsely accused petitioner of misconduct by not scheduling the trust, he did not ever permit a legal proceeding to prove otherwise. When he even hinted at wrongdoing , petitioner attempted to exit the system.(App 17, 18)

petitioner sought to withdraw the chapter 7 petition and have the discharge vacated , which the corrupt opponent Newsome- surely in ex parte consultation with the cronies, the recipients of petitioners stolen money, refused to even schedule. Like all extortion fraud and and theft petitioner was "set up" for the ultimate outcome. **Petitioner is strongly persuaded and can prove it , that Newsome's theft of petitioner's assets, and his gifting Davis and Spear with it , on facts that he know with 100 % certainty to be false, is a criminal act under the guise of authority. This is much like Nazi Germany. Ultimately the nazi extorted and stolen property had to be returned and so must the cronies in the present matter.**

Under duress, threats and terror , on July 1, 2000 petitioner was forced to turn over her exempt assets including her IRA, securities worth about $450.000-$475,000 (App) 23. What became of them ? they were sold -the market had dropped some and all this money was given to Davis , Spear and the burglar as "fees" Whether the ignoble Newsome received a share petitioner does not know at this time. To cover up his misconduct the depraved predator Newsome, called these two coconspirators "the estate". Had there been a legitimate estate it would have received 0 The criminal conspiracy is also proven by the fact that in this stolen money award there is a fee of $150.000 for a trial. One should dare these crooks to prove that a trial ever took place, or even an evidentiary hearing. Petitioner believes that the extortion of her assets under false pretenses, was a criminal act and that all coconspirators are equally accountable.

Dennis Davis had filed a fee request shrewdly titled - after all he has been swindling Courts and every individual possible, for decades , see *In Re: Boyd 243 B.R. 756 (9th Cir 2000)* - interim fee request, therefore procedurally could not be appealed. Petitioner tried. That "fee request , a criminal evidence document of false entries, double, triple and quadruple requests for the same thing, was 120 pages lof convolution to cover the fraud. Petitioner reconfigured this request into 50 coherent pages , and it became clear why the convolution in the the first place: **it was all fraud.** This included billing for 24 hours per day, double ,triple , and quadruple But it was written pro forma, with the knowledge -and prearrangement that neither the $150.000 for an illusionary trial , or $2200 for defending Newsome when petitioner sought his recusal, -a professional violation, that no one cares about- or fees for 16.800 copies, or anything else would not be questioned. The arrangement was that they would receive all of the assets stolen from petitioner.

There is no legitimate entitlement for even one dollar. What did they merit fees for? For getting themselves fees? for bounty hunting? Whom were they representing? Who had standing? No one. This was all an imaginary construct, by corrupt depraved predators to plunder petitioner's assets. Petitioner did not have counsel throughout these proceedings, because as previously indicated petitioner had contacted and met with 10 attorneys -one the chair of the bankruptcy section for the particular area, who all declined for the same reason. This trio consisting of the ignoble Newsome , Spear and Davis constitute a "mafia" o a "gang " and getting involved with them, would adversely affect their ability to earn their living. The kind of abusive predator Newsome is, is illustrated in *Re: Charge of Judicial Misconduct, 62 F 3rd 320 m, (9th Cir 1995),* the complainant an attorney, author , law professor. After petitioner's assets had been extorted, she had the opportunity to retain counsel : the opponent to Davis whom Davis tried to swindle along with District Court judge Breyer, in *Boyd* supra., which would have been great. But petitioner lacked the funds for legal fees. Counsel asked the ignoble Newsome for some of petitioners assets as legal fees, and Newsome refused. After the ignoble Newsome's decision that the assets of the Max Family Trust belong to his cronies, petitioner filed for the IRA exemption, which he denied -after all he had made arrangements for petitioner's IRA, and who should have it. That was appealed to the District Court which affirmed. Petitioner also sought- she had appellate counsel for a short while- an administrative fee for maintaining the apartment in Florida for all these years. Newsome denied and it was appealed to the Bankruptcy Appellate panel for the Ninth Circuit. The BAP affirmed. It is obvious that the bias that this Honorable Court and the Honorable Justice Thomas discerned in *Taylor v Freedland & Kronz , 112 S .Ct. 1664 (1992)* in favor of trustees by and for bankruptcy courts , falsely putting forth a theory-never tested - that they are the keepers of the dam on an overwhelming flood of corruption and fraudulent filings is visibly at work here . Despite the fact that the gross corruption is in the keepers of this dam Congress has been trying to legislate against these corrupt attorneys and judges -the corrupion could not function without the corrupt judges - who in Congress were referred to as the "bankruptcy gang." *House Report 95th Congr[illegible] , first and second session (1984).* The intentional or negligent failure by the reviewing appellate courts to be analytical, to examine, to follow the Constitution, the Rules and state laws is both inexplicable, and inexcusable. It might be to nurture collegiality.

Petitioner was entitled to oral argument pursuant to F.R.A.P. #34 and unlawfully denied same, to her detriment.

On January 28, 2003 petitioner received a notice from the Court of Appeals (App 31) informing her that all her appeals will be heard on March 13, 2003 at 9 a.m. in the Court House in San Francisco, and outlined the times allotted. Some 10 min per side, some 5 min. per side Petitioner requested additional time - this would be the first time she would be heard- and the request was granted on February 24, 2003, allowing an additional 5 min each side to each matter On March 3, 2003 petitioner was notified that there would be no oral argument. The Appellate Panel had decided to dispense with oral argument. This was a deeply detrimental act by the Appellate Panel , a decision possibly based on bias or because petitioner is a prose litigant , or the Court of Appeals had prejudged and decided to affirm. Petitioner assures this Honorable Court that she is very well spoken, holds BA, MSSS, JD and PhD degrees, is fluent and literate in several European languages, and is obviously expert in the present matter. All the pleadings, briefs, filed by petitioner are functional , no claim could be made that they are so extraordinarily complete that the full tableau was immediately discerned. Rule 34 provides that oral argument must be allowed in every case, unless a panel of three judges who have examined the briefs and the record and determine that oral argument is unnecessary because, (A) the appeal is frivolous, (B) the dispositive issues have authoritatively decided, or (C) the facts and legal arguments are adequately stated, and the decisional process would not be significantly aided by oral argument. None of the above statutory reasons were applicable in the matter at instant. The appeal is far from frivolous , the dispositive issues have been decided starting with the United States Constitution, but were not applied in the matter at instant, and although petitioner's brief adequately presented the facts , the crimes and abuses, she makes no claim to excellence in presenting this very important matter. The personal contact , hearing from an individual that is personally affected provides another dimension. " Many judges find that the opportunity for a personal exchange makes a difference in the result". *Report of the Commission of the Federal Court Appellate System , Structure and Internal Procedure: Recommendation for change. (1975).* The Appellate Panel abused it's discretion in denying oral argument.

Summary

Did a corrupt, malicious, Article I bankruptcy court judge, the ignoble R. Newsome , extort , seize, steal and convert petitioner's lawfully held assets , not on behalf of a party in interest-because there was none, but fraudulently and criminally gift a couple of coconspirators cronies with them and does this represent Constitutional violations and an illegal bill of attainder? -is the first question presented , and the answer is **yes.** petitioner was victimized by uncommon predatory depravity and malice. A reading of the very brief decision by the Court of Appeals is evidence that the Appellate Panel superficially skimmed over these appeals, was not interested in facts, law, Constitutional rights, since nowhere it is even mentioned. The decision holds incompatible and incoherent statements, limited to a line or two from the opponents filings. The Panel held that if they were to find that the assets were abandoned to petitioner , the court was still right in reopening the case. This despite the clear documentary evidence that this is not why the court in Maryland was asked to reopen two years later, and why it did. (App 7 &). On the original schedule of assets (App 1) petitioner's interest in them is listed as 0. Why? petitioner does not know. A law firm prepared it. perhaps a computer glitch. The Court of Appeals held this as some sort symbol of a misdeed of "hiding" The former trustee Field, an attorney and trustee for 12 years, had no problems questioning petitioner and preparing interrogatories, (App 2)and representing to the court that he had conducted a "very diligent inquiry" (App 3) and wishes to be dismissed. Pursuant to 11 USC # 704 the trustee has "a duty" to investigate the case, and he said he did. In *Sheehan v Lincoln National Life, 257 B.R. 449 (2001),* responding to a trustee's allegation of fraud regarding an omitted asset -an insurance trust, held that the intricacies of scheduling or even total omission of assets is not necessarily fraud. In this very frivolous and troublesome decision by the Court of Appeals, the Panel is trying to blame the victim for the crime. The Panel is also applying a double standard , in holding that despite the bankruptcy rules requiring that a "trustee " has a duty to investigate, , if he does not , it is the filer's fault. If one were to assume for the purpose of discussion, that this were a fact, the Court of Appeals still did not reach a rational and reasonable explanation as to why the ignoble Newsome could extort and steal petitioner's assets and give them to his "chosen people" The Court of Appeals also ignored the evidence that when she entered corruption hell in the form of the Oakland bankruptcy court and tried to withdraw the chapter 7 petition and the discharge, so that everyone would be where they started, the ignoble Newsome never even scheduled the motions(App 17, 18) .-he needed to steal her assets, and the Constitutional

violations either. Petitioner is seeking a writ of certiorari and to have her assets returned toher. Although as the Honorable Justice Stewart said in : *Fuentes v Shevin, 407 US 67 (1972)* "no later hearing, and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due procees, had already occured. "

Conclusion

For various reasons, including the fact that bankruptcy is a federal matter, the Constitutional rights violations endured by petitioner, the implied bill of attainder, the disregards for the laws of another sovereign state-the State of Maryland, the corruption , preadtory depravity and cronyism of the bankruptcy court, the stealing of petitioner's asets under the guise of authority thereby impoverishing her, the attempts by the ignoble Newsome and his cronies to attach a condition of their own deisre to the Maryland exemption laws , while having waited almost two years for review by the Court of Appeals and receiving a short not on point, devoid of knowledge statement shameful in it's inadequacy, and at a time when this Honorable Court is going to review a bankruptcy matter in the coming winter term, and as the Honorable Justice Stevens said in *Florida v Rodriguez, 409 US 1, (1984)* ," as the court of last resort in the federal system , we hold supervisory authority , and therefore must occasionally perform pure error correcting functions in federal litigation. "
Petitioner prays that thiis is what the Honorable Court will do in the present matter , grant the writ of certiorari, and the hoped for disgorgement of petitioner's assets by the cronies will follow.

August 11, 2003

Submitted

Dr. Pepi Schafler

Supreme Court, U.S.
FILED

03 451 AUG 16 2003

OFFICE OF THE CLERK

CASE NO: 01-16250

IN THE SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER

Petitioner

v

RICHARD J. SPEAR

Respondent

On Petition for a Writ of Certiorari
to the Ninth Circuit Court of Appeals

APPENDIX

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65 pp

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DD 1: Denial of Rehearing en banc

United States Court of Appeals for the Ninth Circuit

Pepi Schafler
Appellant

v

Richard Spear
Appellee

Case No: 02-16695
01-17516
01-16250
01-16270

ORDER

Before: RYMER, KLEINFELD, And PAEZ, Circuit Judges.

The panel has voted to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed R. App. P 35(b) The petition for rehearing en banc is denied.

Filed May 19, 2003

DD 2: ORDER NINTH CIRCUIT COURT OF APPEALS

THIS IS NOT FOR PUBLICATION

United States Court of Appeals for the Ninth Circuit

Pepi Schafler
Appelant
v
Richard Spear
Appellee

Case No: 01 -16250
01-16270
01-17516
02-16695

MEMORANDUM *

Appeal from the United states District Court for the Northern District of California , Maxine Chesney , District Judge Presiding

Submitted March 13, 2003 . This panel unanimously finds this case suitable for decision without oral argumentSee Fed R. App. P 34(a)(2)
Before: RYMER, KLEINFELD , AND PAEZ

Schafler appeal the District Court decision upholding summary judgment granted against her and in favor of the trustee, by the United States Bankruptcy Court of the Northern District of california. We review the grant of summary judgment de novo. In re Stanton, 303 F 3rd 939, 941 (9th Circ 2002). Schafler also appeals a decision by the bankruptcy Appellate Panel , affirming the Bankruptcy Court's order denying Schafler's claim for an administrative expense claim for abuse of discretion. In re Hanna ,168 , B.R. 386 388, (9th Cir. BAP 1994 Assets held by the Max Family Living Trust as of march 26, 1996, were prpoperly determined by the bankruptcy court to be property of the bankruptcy estate. Al property held by a debtor at the commencement of a chapter 7 proceeding is part of the bankruptcy estate unless it is excluded by 11 USC # 541 (b) . The record indicates that Appellant had access to both the net income and the principal of the trust and used the assets of the trust to her benefit. Thus the trust was not subject to exclusion from the bankruptcy estate. The assets that remained in the trust at the initial closure of appellant's case on July 5, 1996, were not technically abandoned to the Appellant as a result of their not having been administered by the trustee.

DD 2, pg 2

11 USC #554 permits abandonment of peoperty scheduled under section #521 (1) of this title. Appellant did not properly schedule the assets in question. although she did list the excistence of the trust on her chapter 7 petition, she omitted her interest in the trust and listed it's value as only one dollar. * This does not constitute proper scheduling of the assets sufficient to permit a technical abandonment upon closure of the case. Nor did the disclosure on the bankruptcy schedule provide the trustee with constructive notice of the assets of the trust. The District Court properly held that the trustees's duty to administer assets of the bankruptcy estate does not extend so far as to require the trusteeto uncover assets intentionally concealed by the debtor. Even were we to hold otherwise , the bankruptcy court court would be within it's discretion to revoke the technical abandonment in a situation such as this , where the trustee was given false information about an assets or the assets was not listed at all. See Cusano v Klein 264 F 3rd 936(9th Cir, 2001), In Re DeVore 223 B.R. 193(9th Cir BAP 1998). Next Appellant challenges the bankruptcy court's denial of the administrative expense claim she submitted to recover some $43.000 in expenses incurred regarding the Florida condominium . She argues that the administrative expense claim should have been approved , and that the bankruptcy judge violated her due process rights by "prejudging" the issue and by failing to hold a separate hearing .Under 11 USC #503 (b)(1) (A) an administrative expense claim can be submitted to recover "the actual necessary costs and expenses of preserving the estate".In re Dak Industries Inc, 66 F3rd 1091, 1094 (9th Cir 1995) . In order to make out a valid administrative expense claim , a claimant must show among other things that the expense "directly and substantially benefitted the estate " Here the bankruptcy court did not abuse it's discretion in determining that the money spent by Appellant in maintaining a condominium that she was concealing from the estate for her personal benefit did directly and substantially benefit the estate . Meanwhile , Appellant's challenge to ther bankruptcy judge's alleged prejudgement of the administrative expense claim lacks merit because she has not overcome the presumption of honesty and integrity on the part of the decision maker.

Affirmed

ERRATA. In the corpus of the petition for the writ of certiorari there is an eror : it now reads the 50 word decision by the Court of Appeals.It should read a 350 word decision.

* The Court misread and therefore misstated this it reads: petitioner's interest one dollar and not the trust value as one dolaar. See Appendix 1.

DD 2, pg 3

Schafler appeals the decision of the District court upholding the bankruptcy court's denial of her claim that some some of her assets comprise an individual retirement account and should be exempt from thebankruptcy estate. We review de novo the question of whether Schafler is entiled to an exemption. Coughlin v Cataldo (In re Cataldo) 224 B.R. 426, 428 (9th cir. BAP) with the exception of findings by the bankruptcy court that Schafler acted in bad faith which we review for clear error. Arnold v Gill (In re Arnold) 252 B.R. 778, 784 (9th Cir BAP 2000). Schafler does not establish that the asset in question qualifies as an exempt account under Seetion 11-504 (h) of the Courts and Judicial Proceedings Article of the Code of maryland. This statute requires that the account meet the requirements of "#401(a), #403 (a) #403 (b) #408, # 408 A, #414 (d), or #414 (e) of the United States Iternal Revenue Code of 1986 , as amended or #409(as in effect prior to January 1984) of the United States Internl Revenue Code of 954, as amended. " Schafler does not argue ,(1)and the record does not indicate , that the account for which she claims an exemption satisfies these requirements.(2)The exemption was properly denied The bankruptcy court's denial of Schafler's motion for an exemption did not deny her due process of law simply because it did not occur at a separately scheduled hearing.(3) the bankruptcy court(4) chose to adress the matter during a hearing on a related (5)matter , after both parties had fully briefed the exemption issue, and gave both parties an opportunity to present oral argument. (6)Schafler argues thqt this was done in violation of bankruptcy local rule 9014 for the Northern District of California , but does demonstrate any prejudice that resulted.(7)Absent a demonstration of prejudice , any eror in this respect is not reversible error . Houston v Bryan 725 F 2nd 516, 518 (9th Cir 1984)

The decision of the District Court is affirmed.

1. She tried. Schafler was denied the opportunity to argue
2. Yes it does, the evidence is overwhelming .
3. The core and minstay of procedural due process is notice and a hearing.
4. A court is supposed to guarantee due process not intentionally violate it.
5. The related matter is that at that hearing of April 25, 2001 jude Newsome ordered all petitioner's securities sold, and the money given to davis, and Spear "as intetim fees" fees for getting themseklves fees. that was the "related " mater. If petitioner would have received her IRA, than there is no money to steal on behalf of Davis and Spear.
6. Counsel argued vigorously that this is improper because it violates the rules, and due process, and judge Newsome made sarcastic comments; counsel also told judge Newsome that he was not prepared for oral argumet without notice of same. He was ignored. Newsome argues on behalf of Davis and Spear 100% of the time and he did so again.
7. This is an odd holding by the Court of Appeals essentially saying, even with notice and a hearing, -the decision had already been made.

DD 3 Re: ORAL ARGUMENT F.R.A.P. #34

United States Court of Appeals for the Ninth Cicuit.

Locations of hearing for March calendar

Date: January 27, 2003

United States Court of Appeals -9th Circuit
95 Seventh Street
San Francisco, California

Thursday March 13, at 9.00 a.m Courtroom 3

* 02-16695 Schafler v Spear
  01-16250 Schafler v Spear
  01-16270 Schafler v Spear
  01-17516 Schafler v Spear

* 10 min per side

ORDER February 21, 2003.

The Court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record , and the decisional process would not be significantly aided by oral argument. Therefore this matter is ordered submitted on the briefs and recor without oral argument on March 13, 2003 in San Francisco California . Fed R. App. P 34 (a)(2).

ORDER February 28, 2003.

Appellant's motion to restore case to argument calendar is DENIED.

For the Court

ss: Howard Hom , Deputy Clerk,
for Cathy Catterson, Clerk of the Court.

DD. 4 -Appeal number 01-17516 on appeal
Re: the entitled to administrative fee

DD 4 pg 1 **On Appeal from the Bankruptcy Appelate Panel**

Not for publication
Before: Ryan, Klein and Russel bankruptcy court judges

After Pepi Schafler filed a chapter 7 petition, her discharge was entered and the case closed. Later her case was reopened , the bankruptcy to allow the chapter 7 trustee to administer unscheduled assets.Debtor then filed a motion for the allowance of administrarive expenses in connection with an unscheduled Florida Condominium.After a hearing the bankruptcy court entered an order denying the motion and Schafler timely appealed.We affirm
Facts; In 1986 the Max Family Trust was established and Schafler served as trustee and as a beneficiary of the revocable trust. Later the trust was recharacterized as an irrevocable trust. However , Schafler maintained the ability to borrow money from the trust, provided that she documents the loan. On December 21, 1995 Schafler transferred title to the condominium to the trust. On March 26, 1996, she filed a chapter 7 petition in US. Bankruptcy court for the District of Maryland. At the time of the petition , Schafler did not schedule any interest in the condominium, nor did she reveal that she transferred the condominium to the trust four months earlier. She however scheduled her interest in the trust valuing it at one dollar.At the 341 meeting , debtor indicated that she had not transferred any property. Based upon debtor's schedules, and her testimony at the 341 meeting the chapter 7 trustee filed a no assets report. On July 5, 1996 there was a discharge and the case was closed. At some point debtor's ex husband told the chapter 7 trustee that debtor had concealed assets. The chapter 7 trustee then moved to reopen the case which the bankruptcy court approved. Later Schafler moved from Maryland to the Northern District of California and "Richard Spear " was appointed "trustee" to administer denbtor's assets. On May 7 , trustee filed an adversary proceeding seeking in part declaratory relief that the trust was property of the estate., or alternatively avoidance of the transfer of the condomonium to the trust. Later , trustee and debtor filed motions for summary judgment ,and the court granted the trustee's

DD 4 pg 2

motion for summary judgment , holding that the trust pproperty of the estate. In reaching that conslusion , the bankruptcy court found that the debtor had intentionally concealled assets, including the condominium. On March 28, 2001 , Schafler filed the motion. Through the motion she sought reimbursement for expenses of maintaining the condominium allegedly for the estate.*
Debtor contended that despite the bankruptcy court's earlier findings that debtor had concealed the condominium , she was entitled to an administrative expense claim because she maintained it , which the bankruptcy court ultimately determined to be property of the estate.After trustee objected to the motion , the bankruptcy court held a hearing on the matter**. at the hearing , the court stated that it was applying the law of the case doctrine *** and therefore , it found that based upon the judgment debtor had intentionally concealed the condominium . The bankruptcy court then stated that as a matter of law, that a debtor that intentionally concealed propery was not entitled to an administrative expense for maintaining that property .However , the bankruptcy court offered her an opportunity to further research the law in order to change the court's view. The court directed debtor's counsel to find a case on point authorizing the reuested relief. **** Debtor's counsel performed further reserach and advised the court that he had not found a case on point. On May 14, 2001 a request was filed for the motion to be submitted on the pleadings*****. the order was entered and subsequently appealed.

*The Appellate Panel so misstated , misapplied and obsessively distorted the facts, as to make them applicable to a fictional case. It would take 10 pages of text to disprove them all. The documents are there for this Honorable Court to examine. Panel's facts must have been generated by the opponents and utiized by the appellate panel to support it's intent. The documents are the best evidenceof how inaccurate these "facts are"

**There was no hearing about this matter. There was a hearing on April 25, 2001 regarding the criminal plunder of petitioner's assets called "interim fees". As usual judge Newsome came in and said " I have decided the administrative fee issue" This was not uncommon for petitione, but uncommon for counsel, a respected attorney and appelate specialist. What followed was Newsome representing his cronies, and arguing with counsel. The opponennt were silent, and as usual were represented by Newsome. The transcript would be the best evidence.

*** Newsome ccreated the law of the case, and created estoppel for his own opinion.

****This whole sequence is false. When counsel argued with Newsome about this matter not being scheduled, and petitioner's rights, and Rule 9014-1 a right to notice and a hearing, he finally agreed to a hearing on the matter for May 16. , 2001,. But ignoble and disingenuous as he is he enterred the order denying the fee a day or two after this "confrontation". the issue was moot.

DD4 pg 3

ISSUES.

A. Whether the bankruptcy court violated debtor's due process rights *

B. Whether the bankruptcy court ered in denying the motion.

Standard of review.

We review whwther the bankruptcy court violated an individual's right to due process de novo. See Duff v. United States Trustee (In re Cal Fid Inc.) 198 B.R. 567, 571 (9th Cir BAP 1996) (citation omitted)

We review the denial of an admisnistrative expense under #503 (b) (1) for an abuse of discretion. See Gull Indfus. Inc v John Mitchell, Inc (In re Hanna) 168 B.R. 386, 388 (9th Cir BAP 1994). A bankruptcy court abuses it's discretion if it basesit's rulling upon an erroneous view of the law , or a clearly erroneous interpretation of the facts. See Cotter & Gell v Hartmarx Corp., 496 U.S. 384, 405 (1990). A bankruptcy court also abuses it's discretion if the Panel is left with a "definite and firm conviction (that) the court below commotted a clear error of judgment in the conclusion it reached. ..." Beatty v Traub (In re Beatty), 162 B.R. 853 , 855 (9th Cir . BAP 1994) (citations ommitted) We review the bankruptcy court's finding of fact for clear error. See Massoud v Ernie Goldberger & Co (In re Massoud), 248 B.R. 160 , 162-63 (9th Cir. BAP 2000). "" A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistaake has been committed " Id at 163 (internal quotation marks, emphasis , and citation omitted.) We review the applicability of collateral estoppel de novo. See Harmon v Kobrin (In re Harmon) 250 F 3rd 1240, 1245 (9th Cir 2001). Similarly , we review the applicability of the law of the case doctrine de novo. See Am. Express Travel related Servs. C(Inc v Fraschilla (In re Fraschilla)235 B.r. 449, 453 (9th Cir BAP 1999) .**

DISCUSSION

Te bankruptcy court did not violate debtor's due process rights.

The bankruptcy court held a hearing on the motion before the time the debtor had scheduled the motion to be heard , because she had not yet filed a notice of hearing wth the bankruptcy court. At the hearing , the bannkruptcy court expressed it's view that debtor ws not entiled to an administartive expense.

*In the disjointed and trunkated decision by the 9th Circuit Court of Appeals (App. DD2) the Appellate Panel held that it is not addressing petitioner's claims to Constituional due process violations, because they were not raised in the lower courts. Wrong, wrong , wrong.

** The BAP has cited all it's own decisions as determinative when the law of the case is the law of the State of Maryland. The BAP citing it's own decisons brings to mind the word "product placement" or advertising.

BEST AVAILABLE COPY

DD4, pg 4

On appeal debtor contends that the bankruptcy court violated her right to due process because it was biased against her and it prejudged her claim to an administrative expense.* . We disagree. The Fifth Amendment holds in pertinent part that "no person shall be ... deprived of life , liberty or property , without due process of law. ..." US Const. Amend. V. It is well settled that the Due Process clause of the Fifth Amendment protects an individual's right to a trial before an impartial tribunal. See Tumey v Ohio, 273 U.S 510 , 523 (1926).In determining whetehr judiscial bias exists , the test under the Fifth and Fourteenth Amendment 's due process clauses are the same. IdAn individual asserting judicial bias has the burden of overcoming **"a presumption of honesty and integrity on the part of the bankruptcy court. Withrow v Larkin , 421 U.S. 35, 47 (1975)

> There are two ways in which a plaintiff may establish that he has been denied his constituional right to a fair hearing before an impartial tribunal . I some cases , the proceedings and surrounding circumstances may demonstrate actual bias, on the part of the adjudicator. In other cases , the adjudicator 's pecuniary or personal interest in the outcome of the proceedings may create an appearance of partiality that violates due process even without ny showing of actual bias.*** Stivers v Pierce, 71 F 3rd 732, 741 (9th Cir 1997) (citation ommitted.)

The BAP made two comments : 1. That Stivers decided under the Fourteenth Ammendment, it d aspplicable here, because the test is the same. 2. The court also cites the holding of the Fourteenth Amendment.In Stivers ****the plaintiff alleged that his license application was prejudged and that he was denied a hearing before an impartial tribunal. See Stivers , .71 f. 3rd at 738. The plaintiff had applied for various licences , including a private investigator's license, because he wanted to buy a private investigation and security company. Id State law requiires that such applications be approved by a board comprised of industry members

* bankruptcy court judge Newsome prejudged every thing about the case.Even he would agree that he is biased against petitioner.

** The first time petitioner encountered him , he told her that he plans to take her assets and give them to Spear and Davis. At the hearing on April 25, 2001 the hearing at issue he told counsel that he had told petitioner that the first day he encountered her.

***Petitioner overcame the"presumption of honesty and integrity of the bankruptcy court" a long time ago,

**** With due respect for the BAP ,this is a very long wordy decision which in addition to repeteadly misstating the facts, is not referring to the documents provided, and the transcript and the briefs. It is reminiscent of college term papers where the volume of words has to serve as a diversion for lack of substance.

DD 4, pg 5.

While working for another company , the plaintiff had successfully taken business away from one of the board members .This same board member would have been a competitorof the plaintiff if the license had been granted. Additionally , this same board member had previously vowed to put the company that plaintiff was aquiring out of business. Moreover this same board member made derogatory comments about the plaintiff during the pendency of the application that showed that he harbored an "extremely negative, biased attitude to ward Mr. Stivers (the plaintiff) During the licensing process , the board treated the plaintiff diferently than most other applicants. Id.738-39. In denying the application , the board specifically relied on a report of one of it's own investigators, who later admitted that his report contained "several incomplete, inaccurate and misleading statements". This same investigator also spread false rumors about the plaintiff's business during the application process. In finding the existence of bias in the tribunal , the Ninth Circuit relied on a totality of the circumstances test. The Ninths Circuit specifically indicated that any one of these factors alone would would probably not be sufficient to find bias However , taking all the circumstances together, the board was biased against the Plaintiff. Here the debtor does not argue that the bankruptcy court was actually biased against her. *Instead , debtor argues that the circumstances surrounding the hearing on the motion show that the bankruptcy court had predetermined how it would rule on the motion. Specifically , debtor contends that the following statement by the bankruptcy court indicates that it had already decided how it would rule. . Go back and look and look at the law to grant and unless you find a case that states the proposition that you have indicated , it is almost a certainty that I am not going to grant your motion for an administrative claim. ** The bankruptcy court did not violate debtor's due process rights as alleged by debtor when it ruled on the motion.

The bankruptcy court did not err in denying the motion

The bankruptcy court denied the motion becuse debtor failed to disclose the condominium in her schedules. On appeal debtor contends that the bankruptcy court erred because the plain language of #503 (b) (1) does not *** preclude her from receiving administrative expense for costs incurred in preserving the condominium for the estate. We disagree.

* among ridiculous points made in the long irelevant decision is that petititoner did not assert bias. At every corner, at every opportunity, in the brief in the reply, in letters. too silly to even comment about. Petitioner considers newsome a depraved predator.

** judge Newsome was quite abusive to counsel because " he had decided this matter." There are numerous complaints to the judicial Council about Newsome doig that

***The reason he denied the administrative fee, is because he promised the cronies all of petitioner's money.

DD4, pg 6

For an expenditure to qualify as an administrative expense , it must be incurred for the benefit of the estate. See Burlington N.R.R. Cov Dant & Russell Inc,853 F 2nd 700, 706 (9th Cir 1988) .This means that the expenditures must directly and palpably benefit creditors. The mere possibility of creating such a benefit is not sufficient. In Hanna ,we established a three-part test that a claimant must satisfy before an administrative claim will be granted See Hanna 168 B.R. at 388 .First the claimant must show that the expense was incurred post petition . Second the claimant must show a direct and substantial benefit to the estate; third the claimant must show that expenditure was actually necessary. Debtor satisfies the first and third prong of test but cannot satisfy the second. The law of the case doctrine * prevents a court from revisiting issues that it had previously decided In order for the law of the case doctrine to apply , the issue in question must have been decided either expressly or by necessary implication in the previous disposition. Thomas v Bible 983 F 2nd 152 (9th Cir 1993) Bankruptcy proceedings are somewhat unique , and the Ninth Circuit recognizes that "in litigation involving a bankrupt , a decision in one proceeding does not necessarily prevent the institution of a new proceeding involving the same issues. Greiner v Wilke (In re Staff Mortgage and Inv Corp.), 625 F 2nd 281, 283 (9th Cir 1980). Here the judgment is on appeal to the Ninth Circuit , but if all parties expected the motion to be governed by the cross motion and the judgment , they were in error. In the motion debtor stated that she was moving for an order allowing and directing payment of the net expenses of preserving the condominium for the estate. Even if the law of the case doctrine did not apply, our conclusion would be the same. At the hearing on the motion **the bankruptcy court determined the debtor did not reveal it's existence to trustee or her creditors.

* The law of the case is the law of the State of Maryland

** There was no hearing. Newsome made the decision ex parte or with the cronies and came to work to read it.

DD 4 , pg 7

In reaching that conclusion , the bankruptcy court noted that the condominium had not been listed in debtor's schedules (2), and the trust had been listed as having a value of one dollar.(3)

Charles Dell'Ario , counsel for petitioner:

"Your Honor , I'll go back to my original premise which is that we have to look at whether there was concealment during the time between March 1996 and July 1996.Now this property(the condominium) was scheduled .Surely we know your ruling that it was scheduled ----

Newsome: No it wasn't scheduled (4)

Dell'Ario: It was scheduled

Newsome: It wasn't scheduled at all

Dell'Ario The trust was scheduled. It was part of ----

Newsome: as being -yes as, being one dollar.(5)

Tr. of proceedings (Apr 25, 2001) at 8-9

Debtor concealed the condominium , and we cannot say that this finding was clearly erroneous. Here from the date of the petition, debtor had unfettered use of the condominium (6)Debtor rented the condominium from time to time and she retained the proceeds for her personal use.(7)She also lived in the condominium (8)

The preservation of the condominium was for her personal use, and not for the benefit of the creditors . as such the second prong of the Hanna can not be satisfied. Therefore the bankruptcy court did not err, in denying the motion.

Conclusion

In sum , the bankruptcy court did not violate debtor's due process rights . Similarly the bankruptcy court did not err in denying the motion.

(2) false condominium was scheduled with the trust as being in petitioner's possession

(3) false. It was not listed as having the value of o1 dollar. petitioner's interest was listed as being one dollar.

(4) False . it was scheduled

(5) False. see note three

(6) had to pay "unfettered expenses"

(7) she had to pay all the expenses; who should have received the rental fees?

(8) False and pure invention by the District Court. Petitioner had never lived there.

(9) Newsome practices law all the time. Arguments are not between two lawyers, but between Newsome and whom ever. Davis and of course Spear are always silent.

DD 5. DISTRICT COURT ORDER AFFIRMING DENIAL OF EXEMPTION

Judge Maxine M Chesney **Dated August 13, 2002***

Background.

On December 18, 2000 the bankruptcy court granted trustee's cross motion for summary judgment , holding that debtor had concealed her in terest in certain assets. A notice of appeal was filed from the resulting judgment. This Court affirmed the judgment on June 12, 2001. On February 14, 2001 while the appeal from the judgment was pending before this Court, debtor filed in the bankruptcy court an Amended Schedule C in which she claimed that an Individual Retirement Account (IRA) was exempt from the bankrupcty estate. On February 23 2001 trustee in response to the amendmrnt , filed a notice of objection to the Claim of Exemption arguing inter alia, that the exemption should be denied because debtor was seeking an exemption in proerty which she never declared as an asset. Debtor's counsel filed an objection to trustee's objuection to Claim of Exemption , arguing therein that trustee's objection was not properly filed under the Federal and Local Rules of bankruptcy procedure(1)(Docket No 187) On March 9, 2001 , trustee filed s motion for Order approving sale of personal property, in which he sought permission to to sell the stock cettificates , that the bankruptcy court had previously determined were the assets of the bankruptcy estate.(2)(Docket No 181)Debtor's counsel filed an opposition to that motion arguing inter alia that some of the stock certificates were subject to the exemption she had claimed in her Amendd Schedule C, and that the motion should be denied until the bankruptcy court "resolved" any "argument the trustee advanced to save his defective objection".(3)(Docket No 194 at 2-3)In reply trustee arguedthat the claim of exemption was precluded because she had fraudulently concealed the assets being claimed as exempt, and that the objection was not defective. (Docket No 202). (4) . On April 25, 2002 the bankruptcy court conducted a hearing to consider trustees motion (Docket No 222) The bankruptcy court, the ignoble judge Newsome granted the motion, sustaining trustee's objection to the claim of exemption on the ground that she had fraudulently concealed the assets that she now claimed as exempt. (5).

(1) many of the "background facts are inaccurate, and imprecise"

(2) The stock certificates were mostly petitioner's Retirement Fund.

(3) In the bankruptcy court with the ignoble Newsome,Davis and Spear do not have to cure anything. they rule in taht court.

(4) In Re Boyd 243 B.R. 756 (9th Cir. ND CAl. 2000) a deffective objection by Davis was changed by him into an outrageous fraud on the court and the opponent, a direction by Judge Breyer that davis not practice law. It is different with Cronies like Newsome.

(5) There is no exception to the Maryland Statute on exemptions from judgment even if the claimant were in prison. Newsome created his own forfeiture law.This was an illegal act of a bill of attainder by Newsome.

DD 5, pg 2. The bankruptcy court also held that trustees objection was timely and in substantial compliance with the bankruptcy rules. The bankruptcy court's oral rulings were memorialized in a minute orderentered on the docket on April 27, 2001 . (docket no: 207.After the hearing the bankruptcy court further memorialized it's oral rulings by issuing on April 25, 2001, and order approving trustees sale of personal property (stock certificates), (docket no 208) and on May 17, 2001 an order denying debtor's claim of exemption for her IRA. (In footnote 3, Judge Chesney notes that the copy of the order denying the claim of exemption in IRA provided to this courtin the record on appeal is not signed . It is undisputed however , that a written order consistent with the bankruptcy court's oral ruling was filed on May 17, 2001 to be found in Appellee's brief.)
On May 3, 2001 Schafler filed a notice of appeal , amended on May 7, 2001 In her amended notice of appeal , Schafler appeals from each of the several orders announced in open courton April 25, 2001, and entered on the docket on April 27, 2001 of the bankruptcy case insofar as said orders are adverse to her. (docket 220).

Standard of Review.

A bankruptcy court's conclusions of law are reviewed de novo. See Ardmor Vending Co v Kim (in re Kim, 130 F 3rd 863 , 865 (9th Cir 1997). A debtor's entilement to a bankruptcy exemption is a question of law. (1) See Matter of Yonikus, 996 (f2nd 866, 868 (7th Cir 1993). Whether a party has properly filed an objectionis a question of law. See Spenler v Siegel (In re Spenle 212 B.R. 625, 628, (9th Cir. BAP 1997)

Discussion and Jurisdiction.

Both parties agree that after debtyor filed the instant appeal the trustee sold the securities in accordance with the bankruptcy court order of April 25, 2001. Schafler concedees that her appeal from the order approving the sale, is moot. Neither party contends that Debtor's appeal from the order denying the claim of exemption is moot.**In a footnote the District Court notes that the bankruptcy court observed at the hearing , that if the exemption order is reversed petitioner will be reimbursed for the value of the property found to be exempt. (docket 220)** (2)

(1) Exemption is a questio of law. What and whose law? State law? bankruptcy law? the ignoble Njudge Newsome's law? The present case is covered by State of Maryland law.

(2) Bankruptcy court judge Newsome is a corrupt liar who covers up his misconduct ; he ordered petitioner's securities sold, about $400.000 worth, and gave it all to Spear, Davis and the burglar as "fees" and calls this the "estate". Whether he personally benefits or how pettioner does not know. But giving Davis more tha one quarter million dollars fees is a criminal act He awarded them fees for bounty hunting and getting themselves fees. Newsome should be in prison. No one other than these cronies has received a dime from this estate.

DD 5, pg 3

Trustee argues that the Court lacks jurisdiction to review that order. According to trustee, because Schafler filed her amended notice of appeal on May 7, 2001 ten days before the bankruptcy court filed it's written order denying the claimed exemption , an appeal from the order denying the claim exemption "is not properly before this court. Rule 8002 (a) of the Federal Rules of Bankruptcy Procedure provides : " anotice of appeal filed after the announcement of a decision or or order but before entry of judgment, order or decree shall be treated as filed after such entry and on the daythereof. Here , debtor filed her notice of appeal after the bankruptcy court court announced it's decision, denying debtor's claim of exemptionbut befgore the written order was issued. Under Rule 9002(a) the notice of appeal is treated as filed on May 17, 2001 , the day the written order was entered.Consequently the appeal is not premature, and the court has jurisdiction.to consider the appeal from the order denying the exemtion.

Merits of appeal.

Debtor argues that trustee's objection to the claim of exemption was not properly filed and noticed , under the Federal and local Rules of Bankruptcy Procedure, and that the bankruptcy court's consideration of the allegedly defective objection deprived her of due process. The Federal Rules provide that an objection to a claim must be filed within 30 days after the meeting of creditors held under #341 (a) is concluded or within 30 days after any amendment to the list of of property claimed to be exempt or suplemental schedules is filed , whichever is later. See Fed. R. Bankr. P 4003 (b) .Here , trustee's objection , which included the argument that the claim of exemption was impproper because debtor had not disclosed the subject "properly" , was filed within 30 days of debtor's filing of her amended schedules C(the meeting of creditors was held on May 1, 1996). Consequently the objection was properly filed under the Federal rules.

The Local Rules provide that an ojection to alaim of exemption "shal be set for an actual heating . See B.L.R. 9014-1 (b)(1)(F).Debtor argues that because trustee did not notice the objection for a hearing , the bankruptcy court erred by considering the objection at the hearing scheduled for determination of the motion to approve the sale . Noncompliance with a local rule, however "is not by itself reversible error absent a showing of prejudice"See Houston v Bryan 725 F 2nd 516, 518 (9th Cir 1984)(holding district court's noncompliance with local rule requiring hearing be conducted on certain motions for summary judgmnet did not entitle appelant to reversal where appellant failed to show prejudicefrom lack of hearing).Debtor contends that because a hearing on the objection was not noticed , she was deprived of the opportunity to show that she had not frauddulently concealed the assets claimed as exempt , and that as a result , she was prejudiced and deprived of due process.

Although trustee did not notice a hearing on it's objection, trustee did notice a hearing on it's motion to approve the sale , which motion sought permission to sell assets encompassed by debtor's claim of exemption. The issues of debtor's entitlement to the exemptions and the sufficiency of trustee's objection thereto were adressed by the parties in the papers submitted in connection with the motion seeking approval of the sale, and therafter were heard by the bankruptcy court at the noticed hearing on the motion to approve , at which time debtyor had the further opportunity to, and did address the merits of her claim of exemption and the sufficiemcy of the objection. (1)

As noted the issue presented by the objection was whether debtor could claim an exemption in pproperty that the debtor had not disclosed. On that issue , debtor did not argue before the bankruptcy court and does not argue to this court , that a debtor who fraudulently (2) conceals assets may later claim those assets exempt. Thus, the legal issue was not in dispute.(3) Indeed active concealment of an asset no doubt requires denial of an exemption claim. (4)See Andermahr v Barrus (in re Andermahr) 30 B.R. 532 , 534 (9th Cir BAp 1983) Instead debtor sought an evidentiary hearing(5) on the question of whether she had in fact fraudulently concealed the assets. That very factual issue, had been fully adressed by the bankruptcy court when it granted trustee's motion for summary judgment (6) on trustee's claim for declaratory relief. In ruling on the motion for summary judgment , the bankruptcy court determined , based on undisputed evidence (7) , that debtor had fraudulently concealed the assets, a ruling memorialized in a final judgment granting trustees motion. A necessary result of that judgment , which this court later affirmed , was that debtor could not claim as excempt the very assets she had fraudulently concealed.At the hearing to consider the truteees motion for approval of the sale, the bankruptcy court declined to schedule an eviden tiary hearing to consider the exact factual issue it had previously adjudicated, and instead reaffirmed its prior final decision that debtor had fraudulently concealed the assets. There is no indication, nor did debtor so indicate to the bankruptcy court that she could have offered new evide relevant to the issue of fraudulent concealment , had a separate hearing been scheduled. (8)Under such circumstances , debtor was not deprived of due proces by the bankruptcy court's decision to reaffirm it's prior ruling tat debtor had fraudulently concealed the subject assets. Accordingly , as debtor has not shown she was prejudiced by trustee's noncompliance with bankruptcy local rule 9014-1 (b) (1) , and the finding of fraudulent concealment necessarily required t hat the claim of exemption be denied, the bankruptcy court did not err by denyin debtor's claim of exemption.

ConclusionThe denial of the exemption is affirmed.

DD 5, pg 5 **NOTES.**

(1) bankruptcy judge Newsome who represents Spear and Davis at all proceedings , was abusive to counsel who argued well, that among other issues : **that the Retirement fund exemptions are statutory in the State of Maryland , created by the legislature of the state, and there is no room for Newsome to attach a condition to it. What counsel ofcourse did not say, but petitioner wanted to ,is that these state rules and laws are not subject to challenge by a hired Article I judge that is an abusive corrupt predator. The law of Maryland is the law of the case.**

(2) there is not one scintilla of evidence of any fraudulent concealment . If there was the bankruptcy rules provide options. Petitioner sought to have the discharge vacated, (App 17 & 18) and withdraw the chapter 7 petition so she would be denied the benefit of the bargain. Newsome never scheduled it, because he immediately had made arrangements with Davis & Spear that they would extort, steal and keep petitioner's assets

(3) It was Judge Chesney duty to look at the issue de novo rather than be an apologist for Newsome and his corrupt enterprise.

(4) False . it was strongly and heatedly objected to.

(5) Wrong again. Petitioner had moved for summary judgment , anticipating that Newsome would rule against her, but this was her only chance at getting away from this criminal enterprise and hope for courts that are courts.

(6) There had never been an evidentiary hearing in this matter. Newsome with Spear and Davis make decisins somewhere , and he comes to work to read them.

(7) Newsome attached the word :fraudulent concealment" just to degrade petitioner.

DD 6 pg 1

United States District Court for the
For the Northertn District of California
Judge Maxine M. Chesney

PEPI SCHAFLER
Appellant*
v
RICHARD J. SPEAR Esq.
Appelle.

Date: June 12, 2001

From an Appeal dismissing judgement of bankruptcy court.

Pepi Schafler hereby appeals the judgmernt of the bankruptcy court, and renews a motion for a stay pending appeal. Her requests for oral argument are hereby denied Judge Chesney is sectively presntying slanting the facts in her recitation so that they will fit hers and judge Newsome's conclusion. The Newsome School of Law.On March 26,1996 debtor filed a chapter 7 petition in banlruptcy., and liste the following assest: Trustee of trust , the beneficiraies are debtor's adult children:. Debtor's interest 1.00. Location in debtors posession. (Judge Chesney failed to note, that alongside that there is a "bank claim" for conversion of $96.500, also loikewised described as debtors interest $1.00, and the ex spouse as an obligor , interest also listed as one dollar App. 1) (Why one dollar? Who knows. The schedules were respared by a counsel in Maryland. The fomer trustee who filed the interogatories, had no dificulties with that) (App 2 & 3). Debtort also attached to the petion a statement of financial affairs in which she stated that she had not transferred any property immediately prior to commencemen of this case, and under penalty of perjury stated that this is correct.(That is still correct. it was available for the trustee to examine. It is unfair to expect petitioner to know as much or more about the process than the former trustee, an attorney and private trustee for 12 years.)The matter was discharged and closed on July9, 1996. Judge Chesney says that the trustee moved on April 28, 1998 to reopen. (That is not exactly accurate and the court should not slant or distort, ort deceive. The Court may make findings as she wishes , but copying the facts as presented by debtor should be accurate. There was no longer a trustee. He had asked to be dismissed on May 1, 1996, and the court did so on July 9, 1996. All the possible assets were abandoned to Schafler as if no bankruptcy had taken place.The former trustee Field never contacted the former spouse, who was a debtor to petitioner, nor the banks re the claim. **Two years later , on April 28, 1998,** the angry scorned ex husband by then a disbared lawyer contacted the former trustee, offered him a to reopen the case, and harass the petitioner. The bankruptcy rules, and the bankruptcy doctrine of laches both hold that after one year a former trustee has no standing

DD 6, pg2

The former trustee deceived the court on whose behalf he was acting., when he sought reopening, nor did he tell the court that the assets were improperly scheduled..The former trustee Field told the court he may want to investigate **possible unscheduled assets of the estate. App 7.)** The court in the State of Maryland reopened on May 7, 1998. Judge Chesney takes a leap of one year to May 5,1999 and speaks of some ongoing proceeding by the trustee. A lot happened in between, including the horrible mistake by petitioner, who trustingly believed -based on prior experience that a " a court is a court" , dignified, honorabl . with integrity that respects everyone's rights, wound up in a corrupt Nazi like den of inequity, with a judge an abusive depraved predator, who within weeks after the transfer told petitioner that he plans to take away her assets from her and give them to his cronies Davis and Spear. Petitioner was stunned nd shocked, presumed he is inebriated or under the influence. What judge-even one who judges pies at a country fair- would say something like that. Judge Chesney goes on that on November 3, 2000, debtor filed a motion for summary judgment . Debtor argued that the trustee's cause of action for declaratory relief lacked merit because the former trustee , three and one half years earlier had irrevocably abandoned such assets to her when the case was closed in July 1996. On December 4,2000 opponent filed a motion saying that the debtor had "fraudulently concealed " her interest in the stock certificates and the condominium and therefore those assets are the proerty of the estate, and having heard Newsome say about one and one half year ago, that he plans to give them petitioner 's assets, they were anxious to get on with it. On Deceber 18, 2000 what passed as a hearing in Newsome's world, took place, and he granted summary judgment to Spear and Davis. holding that the Max Family Trust were petitioner 's property . On December 21, 2000 judgment was entered reflecting same. (Appendix 24).
On January 17, 2001 a notice of appeal wsa filed.

* (There was another issue of timely notice filing, appealed by the trustee which is not germaine at this point to the present matter. Judge Chesney spent several pages on that issue which shall be omitted , and proceed to summary adjudication.)

It is overwhelmingly evident that Judge Chesney is intent on affirming the bankruptcy court, which she ultimately did..

Standard of review.

An order granting summary judgment is reviewed de novo. See In re Lewis, 97 F. 3rd 1182, 1185 (9th Cir 1996)

DD 6, pg 3

" The reviewing court will affirm a grant of summary judmnent only if it appears from the record , after viewing all evidence and factual , inferences in the light most favorable to the nonmoving party, that there are no genuine issuesof material fact and that the moving party is entitled to judgment as a matter of law. " In re Yarbrow, 150 B.R. 223 , 236 (B.A.P. 9th Cir.1999.

Discussion: Pursuant to 11 U*SC #554 (c) unless the court orders otherwise any property scheduled under section 521 (1) of this title , not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title. "{ The court has a note that 11 USC #521 (1) provides that a debtor has the duty to "file a list of creditors , and unless the court orders otherwise , a schedule of assets and liabilities , a schedule of current income and expenditures , and a statement of the debtor 's financial affairs" The court neglected to include the corollary or partner to that section , 11 USC# 704 a trustee has a duty to thoroughly investigate each case).Such abandonment is termed a "technical abadndonment" See In re Mernk 241 B.R. 896 , 913 (BAP 9th Cir, 1999). Although the general rule is that a technical abandonment is irrevocable, the first clause #554 (c) provides bankruptcy courts with "discretion to affect or prevent technical abandonment simply by ordering otherwise. See In re DeVore 223 B.R. 193 , 198 (BAP 9th Cir 1998). (Devore's major holding is that reopening a case means nothing other than getting the files out of storage. and nothing gets put back in the estate. 11 USC # 5010 requires that after reopening of a closed and discharged case, an evidentiary hearing must be held by the court. Never happened in the the present matter. The decisions were made in a bunker.). Judge Chesney notes that the Max Family Trust held securities in amount of $ 296.000 . As the evidence will show that is debtor's IRA her retirement account, exempt under Maryland law.In fact IRA's have to be claimed as exempt under the laws of the State of Maryland. **Ther preamble to the Maryland Statute on exemptions from judgment holds, that it is necessary , so as to prevent citizens from becoming a burden on the state in retirement.** Judge Newsome is only concerned about Spear and Davis's retirement. On appeal debtor argues that the bankruptcy court erred in granting summary judgment because trustee failed to shoe there was no triable issue of fact as to whether the disclosure were sufficient to provide trustee with " constructive notice". of the assets. Debtor contends that she should not have to "bear responsibility for the failure of the trustee to adfminister the trust assets , or deny discharge before he asked the court to close the case . Debtor relies heavily on In Re Atkinson 62 B.R. 678 (D. Nev 1986) . In taht action debtors scheduled a pending lawsuit as an asset

DD 6 pg 4.

by listing the name of the court case , the name of the court and stating the value as unknown. After closing and discharge the creditors sought reopening **Judge Chesney's bias is oozing continuously distorting her statements. There was no one in the present matter with standing to seek reopening. A scorned former husband that offers a bribe, that is not a creditor-but rather an obligor had no standing. Forner trustees can't free lance :" let us see what we find'. Even though the creditors had standing-they were directly affected , the court was a responsible court of integrity, not the corrupt doings of Randall Newsome. He gave all of debtors IRA to Spear and Davis as fees. Judge Chesney writes about a case that she is requested to review, like about a blind date. She speaks of not deprivinfg creditors-had she located any in this reopenening? The only ones moving this case forward had been the "bankruptcy gang" or the "bankruptcy mafia."**Judge Chesney concludes the ridiculous and inapplicable ananlysis by stating : " as stated by one bankrupcty court : "the bankruptcy code does not deprive creditors of the right to share in the debtor's property merely because the trustee failed to find the property or failed to take posession of it for creditors. See in re Harris, 32 B.R. 125 , 128 (S. D. Fla 1983) Rather the bankruptcy Code "deprives the creditors of the right to share in the debtor's property only if that property was formally abandoned bcase. casey the court after a hearing or if the property was explicitly iden tified in the debtor's bankruptcy schedules and was never admin istered by the tustee during thr pendency of the case.Judge Chesney is aware that almost two years elapsed from the closing to the reopening, and says that the former "acted expedidiously' after being alerted by the former husband. No pretense that there were persons with standing involved.

The judgment of the bankruptcy court is affirmed. *

* the other appeal involving extending the time to file notice of appeal, was due to Mr. Davis not providing the signed order until one day after the time to appeal had expired. What a surpeise that he would do such a thing.

APPENDIX 1

March 26, 1996 Debtor Pepi Schafler Case No: 96-12203 DK

pg 2 of petition

Item 19
Contingent and noncontingent interests in estate of decedent , death benefit plan, or trust
Trustee of trust, the beneficiaries of whom are debtor's children Debtor interest: .1.00
Location: *In debtor's possession*

Item 20.
Other contingent and unliquidated claims of every nature , including tax refund, counterclaim of the debtor, and rights to setoff claims.
Dismissed law suit against Marine Midland bank
Location: *In debtor's possession* Debtor Interest 1.00

Divorce claim against ex-husband
Location: *In debtor's possession* Debtor's interest 1.00

APPENDIX 2: Interrogatories report.

Interrogatories:

Date of meeting: May 1, 1996
Name : Pepi Schafler Case No: 96-1-2203 DK
Other bankruptcies : No
Transfers :No
Avoidable Liens: No
Real property: No
Pending Inheritances ? No
Tax refunds: No
Claims: Claim against bank -suit filed was dismissed Suit for $96.500
Significant personal property i.e. coin collection, rare books: no
Insurance No:
Statement of current income and expenditures filed? Yes
All assets and debts listed ? Yes

I hereby certify that I examined the debtor on the date shown, and that the debtor answered as indicated above.
Concluded.

Date 5/1/1996 Trustee: Scott . D Field

Appendix 3 : Trustee report on distribution

United States Bankruptcy Court for the District of Maryland

Re: Pepi Schafler: Case No: 96-12203

Trustee's Report of no distribution

I , Scott D. Field , having been appointed trustee of the estate of the above named debtor , report that I have neither received nor paid any money on account of this estate except exempt property ; that I have a made a diligent inquiry into the financial affairs of the debtor and the location of property belonging to the estate ; and that there is no property available for distribution from the estate over and above that exempted by law, and the debtor's 341 meeting has been held and concluded.

Pursuant to FRBP 5009, I hereby certify that the estate of the above named debtor has been fully administered.

I request that this report be approved and that I be discharged from any further duties as trustee.

Dated 5/1/96 ss/ Scott D Field.

Appendix 4 Bank conversion claim

SUMMER (Schafler) v MARINE MIDLAND Bank
(227 AD2D 932, 643 NYS2D 256)
Pepi Summer (Schafler)Appellant v Marine Midland Bank
New York State Supreme Court
Appellate Division
Fourth Judicial Department , Rochester NY, Monroe County.

Present: Lawton, Wesley, Callahn , Balio and Davis.

The above named Pepi Summer having appealed to this Court from the order of the Supreme Court , entered in the Erie County Clerk;'s office on February 7, 1995 , the order is reversed on the law without costs. The complaint is reinstated. Memorandum that is hereby made a part hereof.

Dated May 31, 1996

Carl Darnall
Clerk of the court

Appendix 5: Closing of the case by the court

United States Bankruptcy Court for the District of Maryland
6500 Cherrywood Lane, Greenbelt Md. 207770

Case No: 96-12203

In Re: Pepi Schafler (Pepi Summer)
4921 Cloister Drive
North Bethesda, Md 20852

Re: Petition for Relief under Chapter 7 filed by the above named on 3/26/96

FINAL DECREE

The estate of the above named debtor has been fully administered

It is ORDERED THAT :
Scott Field is discharged as trustee of the estate of the above named debtor and the bond is cancelled.
The chapter 7 case of the above named debtor is closed .

dated : 7/9/96

ss/ Duncan Keir, US bankruptcy judge

Appendix 6: The ex husband contacts the former trustee

Donald L.Summer
6096 NW 24th Street
Boca Raton , Fla 33434

To: Scott Fields Esq. trustee inbankruptcy

Re : Pepi Schafler /Bk No 12203 DK

Date : April 27 1998

Dear mr. fields;

My brief review of her petition in bankruptcy is as follows:

1. She listed as dismissed an action in Monroe County against Marinc Midland bank. In reality , that action is still pending in which she is the plaintiff, and it is proceeding in the Erie County Court System.(for accuracy please compare to Appendix 4).

I am also enclosing for your review copies of the following documents: Appraisal of personal property dated July 20, 1990. (8 years before)
2 Judgment of divorce filed March 17, 1993.

Very truly Yours
ss/Donald Summer

Appendix 7: Petition to reopen closed case.

United States Bankruptcy Court, District of Maryland
Southern Division

Re:
PEPI SCHAFLER

Case No: 96-1-2203-DK
chapter 7

Trustee's Motion to Reopen Case, and Vacate Final Decree.
Date: April 28, 1996

Scott D. Field , trustee (the trustee) for the above -referenced debtor, requests the court to reopen the above -captioned chapter 7 case and respectfully represents as follows:

1. On March 26, 1996, Pepi Schafler filed a voluntary petition for relief pursuant to chapter 7 of the bankruptcy code
2. The section 341 meeting of creditors was held at the office of the US trustee
3. Subsequent to meeting of creditors the trustee filed a no distribution report to this court
4. The court entered a final decree closing this case on July 9, 1996
5. The trustee has recently received information from an interested party regarding potential undisclosed assets of the debtor
6. The trustee therefore requests that the above -captioned case be reopened to permit the trustee to investigate and pursue recovery of the potential estate assets.

Wherefore the trustee respectfully requests that the court reopen the chapter 7 case of Pepi Schafler and vacate the final decree entered on July 9, 1996, and for such further relief that this court deems just and proper.

Respectfully submitted
ss/ Scott D. Field, Esquire
Chapter 7, trustee
4520 East West Highway , Suite 300
Bethesda Md. 20814

Appendix 8: Order to reopen closed case.

United States Bankruptcy Court, District of Maryland
Southern Division

Re:
PEPI SCHAFLER

Case No: 96-1-2203-DK
chapter 7

ORDER Reopening Case and Vacating Final Decree.
Date: May 6 1998

Upon consideration of the trustee's*motion to reopen case and vacate final decree , and after notice and opportunity for a hearing ,** and it appearing that the relief should be granted , it is this 6th day of May 1998, by the United states bankruptcy court for the District of Maryland
Ordered that the trustee's motion to reopen case, and vacate final decree is hereby granted : and it is further
Ordered that this case is hereby reopened under chapter 7 of the bankruptcy code, and it is further
Ordered that the United States trustee is authorized to administer any and all remaining *** assets of this estate or to appoint a chapter 7 trustee**** to administer such assets.

ss/ Duncan Kier
United States bankruptcy court.

*Judge Kier knows Fields is no longer trustee, and his saying so is a scam but refers to him as such , inconsistent with what he orders later.
** There was no notice and no hearing. there were only 5 business days between April 28 and May 6. Insufficient time for notice and a hearing. Most likely an ex parte event.
*** remaining assets ; the ex husband- informant provided false and inapplicable information on personal property left behind in NY State.
**** Despite crediting Field with being trustee, judge Kier knew that this was a scam , and orders that the US trustee administer the "remaining assets" or appoint a chapter 7 trustee.

Appendix 9. Appointment of trustee

United States Bankruptcy Court, District of Maryland
Southern Division

Re:
PEPI SCHAFLER

Case No: 96-1-2203-DK
chapter 7

Appointment of trustee and designation of required bond.
Date: June 25, 1998

Scott Field of Bethesda Md. is hereby appointed retroactively to May 7, 1998 as trustee for the above identified estate.* This case is covered by the blanket bond for chapter 7 case trustees , a copy of which is on file with the court.

W. Clarkson McDow Jr
U.S. Trustee Region Four

ss/ Clifford J.White III
Assistant U.S. Trustee

* It is recognized by all that when Field sought reopening and identified himself as trustee, he was not . And when the court reopened he was not . It was all a lie.

Appendix 10 : Motion to convert to chapter 13

United States Bankruptcy Court, District of Maryland
Southern Division

Re:
PEPI SCHAFLER

Case No: 96-1-2203-DK
chapter 7

Motion to convert case to chapter 13

Pepi Schafler, the debtor in the above -referenced case, respectfully moves for an order converting this case from a case under chapter 7 to a case under chapter 13 of the bankruptcy code, and states in support of her request the following:
Pursuant to Section 706 (a) , the debtor may convert this to chapter 13, as a matter of right.

Wherefor the debtor requests the entry of an order converting this case from a case under chapter 7 to a case under chapter 13.

Dated August 28, 1998

Respectfully submitted

ss Richard Toikka
Farkas & Manelli
2000 M Street , N.W
Washington D.C. 20036

Attorneys for Pepi Scahfler

Appendix 11 : Order to convert to chapter 13

United States Bankruptcy Court, District of Maryland
Southern Division

Re:
PEPI SCHAFLER

Case No: 96-1-2203-DK
chapter 7

Order Converting Case to Chapter 13

For the reasons set forth in an accompanying memorandum , it is by the United States bankruptcy court for the District of Maryland,

Ordered: That this case under chapter 7 be , and hereby is converted to a case under chapter 13.

Date signed : 10/29/98

ss / Duncan W. Kier

United States bankruptcy court judge
for the District of Maryland

Appendix 12: Requests to speed up confirmation of chapter 13

Letter from Pepi Schafler to judge Duncan Kier

Dear Judge Kier:
A letter that arrived in yesterday's mail indicates that the chater 13 final confirmation hearing is scheduled for January 28, 1999. Since I must leave the state by December 31, 1998, I respectfully requests that this confirmation hearing be rescheduled for earlier, or I be permitted to appear by telephone.

Respectfully
ss/Pepi Schafler

United States Bankruptcy Court for the District of Maryland

Re: Pepi Schafler Case No: 96-12203-DK

Motion for Continuance in Chapter 13 proceedings, and transfer of jurisdiction of the above matter to the bankruptcy Court of Northern California

---

Pepi Schafler, debtor hereby asks this Cort for a continuance of any further chapter 13 and transfer this matter to the court in Northern California. After January 1, 1999 Pepi Schafler will be residing in the San Francisco Bay area. An unexpected tragedy has struck her familly: her only sibling was diagnosed with a grave, grave illness that is most likely terminal. This has caused anguish , pain and despair. Schafler needs to be with her family to help his wife and child save or prolong his lfe. Within a few days she expects to have a California address and provide same to the court.

Respectfully
December 11, 1998 ss/Pepi Schafler

****

Same title to same Court:

Motion to Reconsider the denial of continuance and change of venue
Pepi Schafler asks this court to reconsider the denial of the motion for continuance and change of venue, and wishes to inform the court that she will reside at 642 Preakness Drive, Walnut Creek, Ca 94596

Respectfully
December 26, 1998 ss/ Pepi Schafler

Appendix 13: Denial of Motion to accelerate confirmation and change of venue

United States Bankruptcy Court for the District of Maryland

Re: Pepi Schafler

No: 96-1-2203-DK
Chapter 13

Order denying Debtor's Motion to Reschedule Chapter 13 Confirmation Hearing

The request to reschedule the confirmation hearing scheduled for January 25, 1999 or in the alternative appear by telelphone is hereby denied.

ss/ Duncan Kier
Bankruptcy court judge

Appendix 14. Orders excusing appearance by debtor, ex parte hearing to proceed, denial of chapter 13 confirmation , reconverting to ch. 7, and changing venue.

United States Bankruptcy Court for the District of Maryland

Re: Pepi Schafler Case # 96-1-2203-DK

February 19,1999:

Order excusing appearance.

Pepi Schafler is excused from appearing at the February 25, 1999 hearing , but the hearing will go on.

ss/Duncan Kier , judge

February 25, 1999

Order denying confirmation of chapter 13 plan
For the reasons set forth at the hearing held on February 25, 1999, it is hereby ordered that the confirmation of the plan is denied .

ss/Duncan Kier

February 25, 1999

Order : Reconverting case to a case under ch. 7, change of venue

At the hearing held this day , and upon motion by the trustee this case is reconverted to chapter 7, and the venue is changed to Oakland California

ss/Duncan Kier

Appendix 15: Re "phantom " trustee Richard Spear an attorney for the past 30 years or more been appointed to more than 2000 annually which he subcontracts i.e. sells to other attorneys.

Rules:
The United States Trustee conducts an open system for the recruitment of person interested in serving as private trustees. The US Trustee must assure equal opportunity for all appointees and applicants,. 5.8 C.F.R. # 58.5
Term of appointments to the panel of private trustee are for a period not to excee one year.

Excerpts from depositions and statements under oath by Richard J. Spear to Pepi Schafler, Dated : January 26, 2000 and September 28, 2000.

Statements under oath:
He has been a private trustee for about 30 years
That long ago , hired by a judge Wesley (?) , who is no longer around.
Does not know how one gets hired now.
Is hired for about 2000 cases annually.
Would not discuss the arrangements he has with the attorneys he sells i.e. subcontracts the cases to. He has 5 or 6 favored ones.
He also collects the statutory trustee fee even though he subcontracts the cases.
To a question : what does he do as a "trustee" in the present case?
answer: it would take him a whole week to tell what he does.
Records show a monthly or bi monthly 5 min . telephone contact.

BEST AVAILABL

Appendix : 15 Motion to reclose in lieu of a 11 USC #5010 evidentiary hearing.

United States Bankruptcy Court, Northern District of California
Oakland Division

Re: Pepi Schafler

Case No: 99-42138-05

Motion to reclose a three year old previously discharged for two years chapter 7 case, and then one year ago, improperly , unfairly and unjustly reopened.

Pepi Schafler hereby moves thyis cort for a hearing on June 1 , 1999 or as soon after as the court finds convevnient , to consider the reclosing of the above identififed three year old closed Chapter 7 proceeding which was iproperly reopened two years later on false information provided by a scorned and despicable ex husband in collusion with the former trustee, to whom compensation had been promissed if he harasses this litigant.

Dated April 22,1999

ss/Dr. Pepi Schafler

This Motion was never scheduled., although judge Newsome consulted with the opponents about it,

the motion is eight pages long.

FILE COPY

Appendix 17: Motion to withdraw Chapter 7 petition

In the United States Bankrutcy Court For the Northern District of California Oakland Division

PEPI SCHAFLER

Case No: 99-42138-NS

v

RICHARD SPEAR

Motion to Dismiss Chapter 7 Petition

This litigant who has requested that her discharge in the above identified matter be revoked, hereby requests that the chapter 7 petition be dismissed

May 28, 1999

Submitted
ss/Pepi Schafler

THIS MOTION WAS NEVER SCHEDULED AND NEVER HEARD

judge Newsome has ex parte contact wih the opponent and presumably that is how they wanted it.

Appendix 18: Motion for revocation of discharge

In the United States Bankrutcy Court For the Northern
District of California Oakland Division

PEPI SCHAFLER Case No: 99-42138-NS

v

RICHARD SPEAR

Motion for Revocation of Discharge

This was an in part a response to a motion by opponent , but also a motion for revocation of discharge , to enable petitioner to exit the system.

The last paragraph of this 8 page motion reads: " By this Motion this debtor restates her request that this Court revoke the chapter 7 discharge granted on July 5, 1996, and any further relief the Court deems appropriate.

Dated May 28, 1999 ss/Pepi Schafler

THIS MOTION WAS NEVER SCHEDULED AND NEVER HEARD

judge Newsome has ex parte contact wih the opponent and presumably that is how they wanted it.

Appendix 19: Ex parte hearing scheduled by Davis re vacating discharge

In the United States Bankruptcy Court for the
Northern District of California Oakland Division

Pepi Schafler Case No : 99-42138-NS

v

Richard Spear

June 2, 1999. judge Montali presiding
Newsome was on vacation

Transcript of exparte hearing:
Present Dennis Davis only.

Court: Did you receive the debtor's motion for revocation of discharge in response?
Davis: Not in response: I received several motions from the debtor.
Court: This was filed yesterday:" It's entitled "Motion for revocation of discharge."
Davis: That's really not what she intends it to be. She just doesn't understand what it is all about.
Court : I don't know what she intends it to be
Court: I noticed that she sent out a notice for permission to set a motion on June 1, or whenever it was convenient , but I checked the calendar. and there is nothing set.
This is about the motion in App 16 asking for an evidentiary hearing on the facts , which was never heard. Newsome consulted with Davis about it, and of course they did not want facts to be introduced. Just their lies and frauds.

Judge Montali is a respected judge.

Appendix 20: letter to the bakruptcy court re denial of any access same

Dr. Pepi Schafler
642 Preakness Drive
Walnut Creek, California

June 10, 1999

To: Judge Randall Newsome
Bankruptcy Court, Oakland Division
1301 Clay Street
Oakland, California

Re: Case No: 99-42138-NS

Dear Jusge Newsome:

I am very concerend that I have no access to the court, to be heard while for others it is an open door policy. Dennis Davis has even said that he speaks for the court.

ss/Pepi Schafler.

Appendix 21 sample listing of "services by the burglar paid for with petitioner's assets

This burglar cum investigator is named Richard Carl

9 , 17. 99 drive by
9. 19 . 99 Surveilance
9. 20. 99 Search records in two neighboring counties
9. 21. 99 trash
review documents
9. 23 99 Surveilance -this was going on for many hours
9 26 99 DMV info Maryland
9. 27 .99 PU trash
review documnets

On and on it went for a long time he stalked, tresspassed, and burglarized and petitioner's residence.

Please examine Appendix 22.

Appendix 22.Peitioners private residence and private access

Affidavit.

William Bothe
212 Normandy Lane
Walnut Creek, Ca 94598

March 28, 2000

To whom it may concern:

I William Bothe along with my wife Juana Bothe are the owners of the home at 642 Preakness Drive in Walnut Creek, California 94596 , rented to and occupied by Dr. Pepi Schafler since January 1, 1999.

This is a privately owned development , limited to residents, owners and invitees,in which no municipal services are provided . All the necessary services and amenities are privately paid for throught the fees assessed to home owners.

The trash for single homes like 642 Preakness Drive is kept in the attached utility shed to which the private haulers have entry and remove it,

ss, Wiliam Bothe.

Appendix 23: The list of Petitioner's stocks extorted, seized and stolen.

TO: CHRISTOPHER J. CANNON ESQ
Sugarman & Cannon
600 Harrison Street, Suite 535
San Francisco, CA 94107

From Pepi Schafler June 24, 2000

Dear Chris:

As per our agreement , enclosed find the stock certificates in my posession, except one, for you to share with judge Newsome Hopefully he will let **you** hold them, or he will.I believe that Dennis Davis is thoroughly dishonest and as corrupt as they come.

Disney 1200 shares as of October 1999: there are more now like 1440 or thereabouts. Davis contacted Disney in October 1999 and told Disney that these shares belong to the bankruprtcy court.They are being held there.

AT & T 250 Shares

McDonalds 600 Shares

AOL 2120 shares

Symbol Technologies 337 shares

Microsoft 720 shares

Chevron 100 shares

Dell Computer 125 shares

Coca Cola 400 shares

Eli Lily 100

GE 800 shares

Cardinal health 562 shares

Lucent Techn. 256 shares

Biogen 200 shares

Amazon 200 shares

There might be more through about to split.

Sincerely
Pepi

APPENDIX 24: Summary judgment on Cross Motion
Against Petitioner

Dated December 21, 2000

Dennis D. Davis Esq.
44 Montgomery Street, Suite 2900
San Francisco, California 94104

Counsel: For Richard J. Spear Esq.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RICHARD J. SPEAR Esq, trustee. Case No: 99-42138-NS
Plaintiff

v

PEPI SCHAFLER
Defendant

Judgment after Cross Motion for Summary Judgment

Defendant Dr. Pepi Schafler's Motion for Summary Judgment *and the Cross Motion for Summary Judgment filed by plaintiff Richard Spear came on for a hearing before Oakland California bankruptcy court judge Randall J. Newsome on December 18, 2000. Appearances made are reflected in the record.

It is hereby Ordered , adjudged and decreed:
1. Judgment is enterred in favor of Richard J. Spear trustee on the trustee's claim for declaratory relief
2. The following properties and their proceeds are property of this bankruptcy estate:
a. all the stocks and bonds currently held by the trustee that were turned over to the trustee by the debtor
b. all the stocks and bonds owned by the Max Family living trust as of March 26, 1996 as well as proceeds of said stocks and bonds
c. the Florida condominium
d. all other property held by the debtor in the name of the Max Family Living trust

Appendix 24 pg 2

3. The trustee is authorized to liquidate the aforementioned assets for the benef of creditors
4. Judgment is enterred in favor of Dr. Pepi Schafler on the trustee's claim to revoke the discharge**.

ss/Randall Newsome

Notes:
*As previously noted , petitioner filed for summary adjudication knowing that Newsome would rule against her, but just to get out from that hell of corruption and criminality which is the courtroom whwere Newsome works. None of the appellate decisions correctly noted that In itself not very relevant , but an indication that no court has read hese matters carefully with an open mind; it appears the appellate review was predicated on , and motivated by "how best can we affirm the Newsome decision."
**In denying Spear's mtotion to vacate the discharge, Newsome never even mentioned petitioner's motion to vacate the discharge (App. 18) This judgement and order was written by Davis, and worked out in advance with Newsome-obviously ex parte. His not vacating the discharge benefits the cronies on whose behalf he stole petitioner's money, because had Newsome vacated the discharge a!l the creditors come back and would say: these assets are ours.Let us have them. But Newsome had prom issed them to Spear and Davis, therefore he had to make sure that they are gone. Petitioner also sought to have the discharge vacated. At the first encounter with Newsome he told petitioner he would give her money to Spear and Davis, and call it fees .He did that.

Appendix 25 & 26
Appendix 25: The Maryland Exemption Rules
Appendix 26: The IRA and other tax deferred and exempt items pursuant to domestic distribution law.

Exemption 1.

The State of Maryland exemptions for any retirement plan pursuant to Section 11-504(f)(h) of the Maryland Courts and Judicial Procedures are **Constitutionally mandated.** Exemption are created pursuant to the Mandate of Art. III # 44 of the Maryland Constitution. The purpose for bankruptcy exemption for retirement plans, in this State is to prevent an improvident debtor and the debtor's family from unnecessarily becoming dependents of the State , requiring public support. Therefore a debtor must claim the retirement exemption.

Under Maryland Law , when property is sold under foreclosure of mortgage, mortgagor is entitled to his retirement exemption against his judgment creditors.

Under Maryland Law , a debtor who has made a deed of trust for benefit of creditors is entitled to his exemption.

These exemption , under Maryland Law must be liberally construed *In Re: Solomon , 166 Bankr 832 (bankr D. Md aff'd 173) (Bankr 325 1994.*

Exemption 2
Pursuant to Maryland Rule # 11-504 (b) 5, there is an exemption for any kind of property not to exceed $3000.

Exemption 3
Maryland Rule # 11-504 (f) provides for the exemption of an interest in real property not to exceed $ 2500.

THE IRA AND OTHER TAX FREE ENTITIES TO PETITIONER

(1) From :
Birzon & Zakia
Attorneys and Counsellors at Law
360 Statler Towers
Buffalo, New York, 14202

To:
Erie County Sheriff's Dept
Civil process Dept.
134 West Eagle Street
Buffalo New York, 14202

July 8, 1993
Re: Summer v Summer

Gentlemen:
Enclosed find five (5) separate Executions Against Property in connection with the above matter. I am also enclosing a d certified copy of an Order and Judgment in favor of the Plaintiff, Pepi S. Summer against the Defendant/Debtor , Donald L. Summer in the amount of Three Hundred Forty Thousand Eight Hundred Seventeen Dollars, and Twenty Seven Cents ($340.817.27) which was filed and docketed with the Erie County Clerk on July 7, 1993. Our file reflects the last known address of the Judgment Debtor Donald L.Summer SSN 060-30-0500.as 1300 Statler Towers , Buffalo NY 14202. ,

At a Matrimonial Special Term of the Supreme Court of the State of New York, held in and for the County of Erie at 50 Delaware Ave , Part 16, Buffalo New York, on the 14th day of July 1993

Filed July 14, 1993

The Hon. H. Buswell Roberts Presiding

Pepi Summer
Plaintiff

ORDER

v
Donald L. Summer

Index: No: H-75004

Upon the Order to Show Cause of the 13th of July 1993.....

It is hereby ordered:
Ordered: that Shearson Lehman brothers Inc are immediately directed to roll-over fifty percent 50% of the IRA in the name of Donsld Summer account number 356-614-72-15-0615 into an IRA in the name of Pepi Summer account number 356-31998 -13-065 effective July 20, 1993.

Ordered that Defendant immediately transfer to Plaintiff the various shares of stock subject to this order, and that said transfers take place before an appropriate authority to guarantee said signature,

Ordered, that the judgment in amount of Three Hundred Forty Thousand Eight Hundred Seventeen Dollars and twenty seven cents ($340.817.27) filed on July 7, 1993, by Pepi Summer aginst Donald Summer is hereby vacated.

ss/ H. Buswell Roberts.

Addendum:

In the early 1990 ties there had been a consolidation of brokerage houses, with the larger ones bying out the smaller ones. Other than a name change there was no significance to that. (The opponent tried to make something of that)

Petitioner also changed the name of the IRA into the Max Family Trust. There was no significance to that either other than the desire to drop the name Summer.The IRA and the Marital distribution are tax free to petitioner. Everyone may invade their retirement fund, to purchase a home, for health care costs , education costs, except they have to pay the taxes. These would not be taxable to petitioner.

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Pepi Schafler **Case No: 12203-DK**

Description of property:

IRA Rollover

account # 356-31998 at Shearson Lehman brothers **name Pepi Summer**
Shearson Lehman brothers merged with Smith Barney account # 356 -36099
Smith Barney merged with Solomon brothers became
Solomon Smith Barney
Pepi Summer retitled Max Family Trust account # 179-40963-11
Law providing exemption: MD Courts and Judicial Proceedings11-504(h)
Value of the claimed exemption: $275.000
Current value of claimed exemption: $275.000 plus interest starting on April 25, 2001.

Property not to exceed $ 3000

Equity in apartment #204, 5780 Fairway Park Court, Boynton Beach, Fla 33437
Law providing exemption: Md. Courts and Judidial Proceedings 11-504 (b)(5)
Value of claimed exemption #3.000

Interest in real property not to exceed $2.500

Interest in real property in Apt # 204, 5780 Fairway Park Court,
Boynton Beach Florida, 33437
Law providing exemption: Md Courts and Judicial Proceedings: 11-504(f)
Value of claimed exemption: $2.500

APPENDIX 27 ADMINISTRATIVE FEE:

The bankruptcy court and the appellate courts violated petitioner,s procedural due process rights , her rights to an unbiased court and an administrative fee pursuant to 11.USC 503.

The deniall is unwarrantefd and even more galling because it comes from a corrupt predatory bankruptcy court and the appellate courts just look to affirm. The public complains of the inpenetrable "blue wall" of law ebnforcement who excue each otherswrong doing and largely c cover up for each other. There is "black robed wall " that does the same thing.

In the period from March 1996 to April 2001 the costs of maintauining this apartment have been $63.113.
Mortgage: $38.880
Condominium fees $9210
Homeowner Assoc. fees $4280
Insurance $990
Repair and maintenace contract $815
Telephone $1300
Power & Light $2.238
Water & Sewer $1100
Replacements: Hot water tank $450
Compressor $850
Miscelaneous $3.000
Total $63.113

Petitioner had accidentally omitted the cost of cleaning: Carpets, and regular maid cleaning. $1.500,

In the period of five years the apartment has been rented fourt times ; the rules permit only one rental per year usually it is in the winter months mostly for 3 months. The rental income generated was $19. 440

Total expenses after deducting income is $43. 673.

It is not hard to guess that judge Newsome who told petitioner at the first encounter that he plans to take her money and give it to Davis and Spear, is not interested in 11 USC 503, (b)(1)(A) or anything else that is legal, fair and just.

APPENDIX 28: The Interim Fees:
The lies, theft and rapacious plunder.

The first time petitioner encountered judge Newsome of the Oakland bankruptcy court he told her that he is planning to take her assets away from her and give them to Davis and the cronies, and erven lie about it by calling it "the estate". Petitioner was hoping he would sober up soon. It is not known whether he has or has not , but he did exactly that. His conduct is not only reprehensible, but is also criminal stealing is stealing.

On June 24, 2000 (App 23) petitioner hnded over to the crooks securities worth somewhere in the vicinity of $450.000-$475.000 Not willingly to be sure-taken by surprise, not prepared for the existing corruption. On December 18, 2000 responding to petitioner's motion for summary adjudication Newsome granted the cross motion by Spear, and held that petitioners assets abandoned to her , and largely exempt belong to Spear and Davis-the pretense of a legitimate estate must be abandoned. (App 24)

With tthe securities in hand, noe the task was for Davis to fill pages with claims for fees, make it confusing, so it will be hard to decipher, and go for it. Essentially nothing legitimate happened in this matter other thanworking on steling the assets.

In February 2001 Davis had his "interim fee request ready", sent it out and set a hearing on it for April 21. 2001. The interim fee request, convoluted like an electricity grid, covering almost 140 pages asked for Two hundred and sixty seven thousand and one hundred and eighty one dollars $267.181 in fees for getting themselves fees. Spear claims fifty thousand dollars. 50.000. Total: $317.181 " as fees" This is beyond outrageous. At the hearing on April 25, 2001 Newsome awarded them these fees and lying crook that he is said: "the estate has waited long enough" He is aware though that he is lying and is a corrupt predator. In denying petitioner her IRA exemption, he had a monetary attack of truth and said: " if petitioner prevails in the appellate process than Spear and davis will have to return the money" No pretense about an estate.

Petitioner reconfigured the fee request into readable pages , which made this about 68 pages long.

Davis demanded and received over one hundred and twenty thousand dollars -$120.000-for a trial . there never was a trial, there had not ever been an eviden tiary hearing.

Davis demanded and received about $50.000 for "tracing" Since he and Newsome had hired a burgalr to steal petitioner's records , which were all in order-what was there to trace? Turns out that was about the change in name of the brokerage house, something that anyone that reads on the 7th grade level could figure out . When Shearson merged with Smith Barney, they send a notice and say as of such a date the new name is Smith Barney; thereafter they merged with Solomon brothers and became Solomon Smith Barney. Does that need a lot of tracing?

On any given day there are double, tripple and quadruple entries for the same thing "research and review".

Davis demanded and received $ 6.800 for keeping in touch with the ex husband.

Davis demanded and received $.2.200 for representing judge Newsome when petitioner sought his recusal. This wasan unethical act of bribery on both their parts. Petitioner sought an opinion from the California Bar regarding this matter.

Davis demanded and received payment of $3.600 for copies. At 20 cents a copy that covers about 16.800 copies. A wall of copies if ity ewere true.

Davis demanded and received approximately $18.000 for a trip to Washington D.C. during cherry blossom time, to depose the ex husband. and a former stock broker.

Davis demanded and received about $2.000 for messenger service.

Although it is obvious that judge Newsome prostitutes his job, and that petitioner was his victim, singled out to steal her money, which is what Nazi 's did. But Newsome and Davis also needed to assert their control in other ways.

On September 6, 2000 depositions were scheduled for September 28, 2000 to include petitioner, Davis and Spear Notices were sent out , and petitioner had left for the east coast on September 8. On the way to the airport petitioner was injured in an accident and had her left shoulder dislocated

was briefly hospitalized and required to wear a stabilizer for her arm and shoulder , which made driving a bit difficult. The place for the deposition had not been set, and the issue was who would cross the Bay bridge. Davis was adamant that he will not, and petitioner was equally adamant especially because of the injury. But since Davis is the House favorite with Newsome, and complained about this issue, so Newsome scheduled a hearing,for September 20, 2000 wasting the public's resources to order petitioner that she go to Davis's choice for the deposition. To the complaint that driving is difficult with one hand, and somewhat dangerous, he replied "take public transportation" Newsome awarded Davis $550 in fees for that caper., out of a total of $1600 for the day.

On April 25, 2001 the securities were orederd sold, and Davis alleges that the sale brought only Three Hundred and Sixty eight thousand and four hundred and eleven dollar -$368.411- of which the cronies received $317,181 in "fees"In the fee schedules there are zero expenditures for any former creditors,and the expenditures to keep the "illusionary trustee" informed are about $1.000.Whether judge Newsome received any of this money, petitioner does not know as yet.

<u>This rapacious plunder and theft of petitioner assets is a criminal act, reepresents theft under false pretenses, and many other impermissible offenses. Petitioner prays that this Honorable Court will return her stolen assets to her</u>

Appendix 29 Hearing of April 25, 2001

During this hearing , in judge Newsome's own words he admitted that the assets he is about to rapaciously plunder and steal, belong to petitioner. Furthermore he acknowledged that his theft is on behalf of Spear and Davis (possibly himself and another person) as well. It is quite disturbing that the Appellate courts ignored the evidence because they were intent to affirm the lowest courts.
The recurring theme in the present matter is the abuse of the judicial process by judge Randall Newsome, who in his ignoble perfidy found petitioner to be suitable prey, and with his cronies and with the cronies could rob and terrorize. The court proceedings in these matter were either ex parte or a sham. Secure in Newsome's bias in his favor Davis scheduled proceedings ex parte , when he knew that petitioner was out of town or even out of the country, without her having notice. or be present Newsome did not mind. Due process ? Not in his nazi agenda. Consequently , none of petitioner's motions were ever scheduled, nor was there ever an evidentiary proceeding. (App 16, 17, 18) While acting as prosecutor , persecutor, accuser and abuser, and representing the opponent , he falsely accused petitioner of wrongdoing. Were this so, than certain Constitutional rights attach. Not in his scheme of things . He is no longer cognizant of is abusive biases . This is his "normal" At different times when he ranted against petitioner , he would thereafter turn to his cronies, and in his best voice half whisper to them " this means you as well".
The hearing for April 25, 2001 was scheduled by Davis to get the promised to him bounty, which he had been zealously hunting for and had been promised to him under the false title as "fees" Davis through his "counsel" Newsome wanted to object to petitioner's IRA exemption claim (App 25 &26) ., and the administrative fee request (App 27). But the objections were not noticed for a hearing as required by the rules, and did not meet due process requirements. Petitioner was fortunate to have counsel for this proceeding , which meant not having to be in Newsome's presence. On January 30, 2001 judge Newsome uttered a threat against petitioner. Therefore in addition to detesting him, it had become dangerous for her to be in his proximity

Transcript of hearing April 25, 2001
The transcript is 47 pages long, these pages are limited to the relevant. **Present: Dennis Davis, Richard Spear, Charles Dell'Ario counsel for petitioner, and judge Newsome.**

C should stand for court -judge Newsome
DD for Davis
DA for Dell'Ario
C. the first matters I am going to take up are the motion to sell and the objection to the exemptions. Also the request for an administrative expense might as well be dealt with today.-the debtor's request for an administrative fee.

DA. we set that for a special hearing as we are required to do, for May 16, 22001. These claims are factually intensive.

C I don't think they are; there are questions of law whether a debtor is entitled to a priority administrative expense at all.
DA . I did not come prepared to address that.

C. If you don't disclose property you can't claim it, not as an exemption or for an administrative fee.
DA When the case was closed the property was hers to do with as she would. The examination of these matters must go back to Maryland to the facts that her property is not part of the estate at all.

C She was concealing the property all along.
DA You are not entitled to draw that conclusion.

C. Well I have drawn it

DA. Very well, you have. Goes on to explain why an administrative fee is appropriate: because petitioner spent her money maintaining this asset for a "possible estate".

C. The property was concealed.

DA. It was not ; it was scheduled.

C. No it was not

DA Yes it was . The trust was scheduled.

C. She was in complete control of the trust

DA That is why it states on the schedule that it was in her posession.

C. Look if you want to argue some more that is fine . You objected to the fees. **I told your client the first time I saw her or I am pretty sure it was at least the second that every objection raised by her or anybody, she pays for it it comes out directly out of her assets.**.(**In a moment of full brain activity Newsome acknowledged that the assets he stole and is about to hand over to the cronies do not belong to an estate , but to petitioner, despite all his previous lies.)**

DA Had there been an indication that this matter was going to be heard today I would have briefed it and prepared for it.

C. It is almost a certainty that I am not going to grant your motion for an adminisrrive claim.

DA Very well.

C . Now about the motion to sell and the claim of - objection to exemption

DA. The claim of exemption is another matter that is not properly disposed of by way of a reply brief to a motion to sell. The objection in no way complies with this court's rules regarding setting this matter for a hearing.

C. Other than not having a hearing date on it, and being captioned "notice , what other things are wrong with it under Rule 9014?

DA Well Rule 9014 of the bankruptcy rules or Local Rule 9014-1?

C Any rule

DA 9014-1 (a) specifically says that a hearing is required on a claim of exemption.

C. Le us asume that is trueWhat are we going to do if wee take this to trial?

DA we are entiled to put on evidence.

CAll right: So what you really want is to make a collateral attacck on the findings I had already made.

DA. I am making a direct attack

C. It is collateral because it has already been ruled by me.

DA You ruled on a different standard of proof: namely the preponderance of evidence standard rather than clear and convincing standard.

C . There is no clear and convoincing standard in bankruptcy court

DA Yesthere are

CA Well if they do they are wrong.

DA Exemptions can fail for one of two reasons.: because the standard is not met, or for bad faith.

C. Bad faith and concealment can be used inerchangeably

DA Bad faith is a matter of clear and convincing proof.

C. No. I am going to make a ruling that the question of bad faith or concealemnt is by the preponderance of the evidence. What else needs to be decided in order to decide the exemptions:?

DA I don't think you are entiled to give collateral estoppel or res judicata effect to your own summary judgment effect.

C. Might be, but I have made them. , and I don't intend to relitigate them.

DA. I would not ask if I d[illegible] not think it is an appropriate request. You are required to give us a hearing.

C. No . I am not. I don't think you are entiled to it in the slightest.

DA Re the sale of the property : This court lacks jurisdiction to order the sale of the property at the summary judgment stage., it will cause irreparable injury

C It does not preclude me from going ahead with the sale.

DA I was counting on your consideration

C. If she prevails she is entitled to the cash value.
C. Mr. Davis , do you wish to be heard on anything/

DD. No your honor.

C. Mr. DA do you have anything else to say?

DA. Only to the point that the objection was not properly raised in a timely manner, therefore it precludes us from going forward.

C.I don't know about evidentiary hearings to relitigate, and what can be said about the claim of exemption.

DA. That your honor is unwilling to give us a hearing on the claim of exemption or relitigate any facts.....

C. That is not quite accurate. You are having you hearing right now

DA. An evidentiary hearing.
C. Yes that is accurate.
DA The court will rule based on it's prior ruling, which is not entitled to preclusive effect.

C. Well this motion by Schafler opposes the sale of the securities until the objections to the claims are brought., and her exemptions claim heard. The securities are ordered sold , and proceeds given out as fees.

The next twenty pages are devoted to fee requests . The ignoble judge Newsome makes outrageously disingenuous statements about the fees, comments that belong to a common swindler not anyone entitled to be called judge. He made a big point about a double entry for 105 dollars, he missed -intentionally of course- more than $120.000 for a "trial". While a few pages back Newsome said several times to Del'Ario:" look these are you client's assets; or this is your client's money. . Toward the lasts page of this transcript , he said petitioner's money belongs to the creditors, while he gave it all to Spear and Davis as "fees". This Honorable Court is asked to take notice that all the arguments of the opponent were made by judge Newsome. Davis did not speak even once. A judge is not permitted to practice law.

practices law impermissibly. This also makes it clear that petitioner was abused and railroaded. No wonder she could not get counsel to represent he They would have had to argue against a corrupt judge rather than another lawyer.There was no judge to listen and impartially judge. The so called judge was trying to steal her assets from her for his clients: the cronies.

Newsome did not want an evidentiary hearing; there had never been one an petitioner was without counsel throughout. He did not permit one even whe there was counsel.

Appendix 30. Re the fraudulent extortion predatorydeceptions and criminality of Dennis D. Davis counsel for the illusionary trustee Richard J. Spear, which is suborned and encouraged , defended and rewarded by bankruptcy court judge Randall Newsome . Davis lies to and deceives Newsome as well when needed, but Newsome does not mind, he is still his "house favorite".

That Dennis Davis is a shameless lying crook of gargantuan dimensions and considered to be the most unethical attorney in San Francisco and the Bay area would be of no consequence other than the fact that he is judge Newsome's favorite and favored ,and that petitioner was gravely victimized by him.It is too extensive to detail, that will have to wait. When an error in judgment and lack of knowledge of how corrupt some sections of the court system can be and how much fraud is tolerated, it all became personal. Davis has caused petitioner great harm. The following case demonstrates what Davis is capable of ,and the kind of activities he engages in : a massive fraud deceiving the District Court, his client and the opponent. Therefore deductively and constructively it is easily imaginable the extent to which he was able to to harm this petitioner, who was new to the area, new to the system ,without counsel, and an ignoble judge Newsome whose favorite Davis is.

In Re Boyd, 243 B.R. 756 (N. D. Cal 2000)
United States District Court, San Francisco ,
Judge Breyer , presiding.

The issue in Boyd is the failure the Boyd's to list a claim in tort against Home Depot on their chapter 7 petition. After the discharge they received $700.000 from Home Depot and they sought exemption for this award. The trustee whose counsel Davis was ofcourse screamed fraud, and expressed objection. Pursuant to the Fed. Rule of Bankr. Proc. 11 USC # 4003 (b) an objection must be filed within 30 days. Davis did not. But not to worry: **he pretended that he had, deceiving Judge Breyer, the Boyds and their counsel,and his own client.** He continued to appear before judge Breyer , demanding the funds from this award, continued to accuse the Boyd's of fraud , continued the legal process of negotiating , knowing that he is deceiving everyone . An untimely filed objection is not acceptable, and therefore he had forfeited his right to continue , and his actions were a massive fraud. Suspicious the Boyds' counsel checked the docket and realized the fraud and notified the court. Ofcourse the proceeding was dismissed, and an infuriated Judge Breyer told Davis to stop practicing law, his kind are not needed in he profession.

Appendix 31: Re the misconduct of bankruptcy court judge Randall Neson

In Re: Charge of Judicial Misconduc
62 F 3rd 320 (9th Cir 1995)

This is a fairly long complaint by an distinguised attorney, author and law scho lecturer. One of many complainants about Newsome's conduct to the Judicial Council of the Ninth Circuit.It appears there are prepared letters of excuses ready to go at the push of the print button.Newsome routinely violates the Cannons of Judicial Conduct. In the present complaint, as Newsome always in every case represents someone, one of his cronies -he has a list, and in the case at issue did not allow the attorney to argue his case on behalf of his client , and intrerupted this complainant **19 times, during two separate hearings "in a discourteous , abrupt, impatient , harsh and unfair manner" In his response to the complaint judge Newsome acknowledged that he had done so, but said he"knew what counsel was going to say" as if it mattered what he knew.**

The complaint also charges ex parte communications with another judge about complainant, and during a case in which this attorney represented another client, Newsome said apparently "judge so and so had the same problem with you. The Judicial Council of the Ninth Circuit makes excuses for Newsome, otherwise he should have been long gone from this position. He is an Article I contractually hired judge and needs another job. In covering up for Newsome the Judicial Council noted that the guide in a complaint is whether the complaint is prejudicial to the expeditious administration of the business of the courts. Randall Newsome's conduct is quite prejudicial to the business of the courts, and his cases clog the Appellate courts. The Judicial Council needs to be reminded that Mussolini made the trains run on time.

Supreme Court, U.S.
FILED

CASE NO: 01-16250

03 451 AUG 16 2003

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER

Petitioner

v

RICHARD J. SPEAR

Respondent

On Petition for a Writ of Certiorari
to the Ninth Circuit Court of Appeals

SUPPLEMENTAL APPENDIX

Pepi Schafler, BA, MSSS, JD, PhD
642 Preakness Drive
Walnut Creek, California 94596
Telephone: 925-938-8743
Telefax: 925-938-6026

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– DD2: ORDER NINTH CIRCUIT COURT OF APPEALS

Filed March 27, 2003

THIS IS NOT FOR PUBLICATION

United States Court of Appeals for the Ninth Circuit.

Pepi Schafler
Appellant

v

Richard Spear
Appellee

Case No: 01-16250
01-16270
01-17516
02 -16695

MEMORANDUM

Appeal from the United States District Court for the Northern District of california, Maxine Chesney , District Court Judge Presiding.

Submitted March 13, 2003. This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App p 34 (a)(2) Before: Rymer, Kleinfeld , and Paez.

Schafler appeals the district court decision upholding summary judgment granted against her and in favor of the trustee, by the United States bankruptcy court of the Northern District of California. We review the grant of summary judgment de novo. In re Stanton, 3203 F 3rd 939, 941 (9th Cir 2002) . Schafler also appeals a decision of the Bankruptcy Appellate Panel, affirming the bankruptcy court's order denying Schafler's claim for an administrative expense claim, for abuse of discretion. In Re Hanna, 168 , B.R. 386, (9th Cir BAP 1994). Assets held by the Max Family Living Trust as of March 26, 1996 were properly determined by the bankruptcy court to be property of the bankruptcy estate. All property held by a debtor at the commencement of a chapter 7 proceeding is part of the bankruptcy estate unless it is excluded by 11 USC # 541 (b) The record indicates that Appellant had access to both the net income and the principal of the trust and used the assets of the trust to her benefit. Thus the trust was not subject to exclusion from the bankruptcy estate. The assets that remained in the trust at the closure of appellant's case on July 5, 1996, were not technically abandoned to the Appellant as a result of their not having been administered by the trustee.

DD2 pg 2

11 USC $554 permits abandonment of property scheduled under section #521 (1) of this title . Appellant did not properly schedule the assets in question , although she did list the existence of the trust on her chapter 7 petition, she omitted her interest in the trust and listed it's value as only one dollar. *This does not constitute proper scheduling of the assets sufficient to permit a technical abandonment upon closure of the case. Nor did the disclosure on the bankruptcy schedule provide the trustee with constructive notice of the assets of the trust. The District court properly held that the trustee's duty to administer assets of the bankruptcy estate does not extend so far as to require the trustee to uncover assets intentionally concealed by the debtor . Even were we to hold otherwise , the bankruptcy court would be within it's discretion to revoke the technical abandonment in a situation such as this , where the trustee was given false information about an asset or the assets were not listed at all. See Cusano v Klein 264 F3rd ; 936 (9th Cir 2001), In re DeVore 223 B.R. 193 (9th Cir BAP 1998). Next Appellant challenges the bankruptcy court's denial of the administrative expense claim she submitted to recover some $43:000 in expenses incurred regarding the Florida condominium apartment. She argues that the administrative expense claim should have been approved , and that the bankruptcy judge violated her due process rights by "prejudging" the issue, and by failing to hold a separate hearing. Under 11 USC # 503 (b) (1)(A) an administrative expense claim can be submitted to recover "the actual necessary costs and expenses of preserving the estate."In Re Dak Industries Inc. 66 F3rd 1091 , 1094 (9th Cir 1995) In order to make out a valid administrative expense claim , a claimant must show among other things that the expense "directly and substantially benefited the estate". Here the bankruptcy court did not abuse it's discretion in determining that the money spent by Appellant in maintaining a condominium that she was concealing from the estate for her personal benefit did not directly and substantially benefit the estate. Meanwhile , Appellant's challenge to the bankruptcy judges alleged prejudgment of the administrative expense claim lacks merit because she has not overcome the presumption of honesty and integrity on the part of the decision maker. **Affirmed.**

ERRATA: In the corpus of the petition for the writ of certiorari there is an error : it now reads: "the 50 word decision by the Court of Appeals. It should read the 350 word decision

*The Court misstated and therefore most likely misread what it actually states on the petition: It does not state that the value of the trust is one dollar. It states petitioner's interest as one dollar. See Appendix 1.

DD2, pg 3

Schafler appeals the decision of the District Court upholding the bankruptcy court's denial of her claim that some of her assets comprise an individual retirement account and should be exempt from the bankruptcy estate. We review de novo the question of whether Schafler is entitled to an exemption. Coughlin v Cataldo (In re Cataldo) 234 B.R. 426, (9th Cir BAP) with the exception of findings by the bankruptcy court that Schafler acted in bad faith which we review for clear error. Arnold v Gill (In re Arnold) 252 B.R. 778 (9th Cir BAP 2000). Schafler does not establish that the asset in question (1) qualifies as an exempt account under Section 11-504 (h) of the Courts andJ Judicial Proceedings Article of the code of Maryland. This statute requires that the account meet the requirements of "401(a), #403 (a) #403(b) , #408 , #408A, #44149d) or #414(c) of the United States Internal revenue Code of 1986, as amended or #409 as in effect prior to January 1984) of the United States Internal Revenue Code of 1954 as amended ". Schafler does not argue (2) and the record does not indicate , that the account for which she claims an exemption satisfies these requirements (3) The exemption was properly denied. The bankruptcy court's denial of Schafler's motion for an exemption did not deny her due process of law simply because it did not occur at a separately scheduled hearing.(4)The bankruptcy court chose to address the matter (5) during a hearing on a related matter (6) , after both parties had fully briefed the exemption issue , and gave both parties an opportunity to present oral argument. (7) Schafler argues that this was done in violation of Northern District of California local bankruptcy rule 9014, but does not demonstrate any prejudice that resulted. (8) Absent a demonstration of prejudice , any error in this respect is not reversible error. Houston v Bryan 725 F 2nd 516 , 518 (9th Cir 1984). **The decision is affirmed.**

1) She did and continues to do so.
(2) Schafler was denied the opportunity to argue. A review of the transcript would show that judge Newsome of the bankruptcy court who represents the opponent did not let anyone speak.
(3) Yes it does meet the requirements ; the evidence is overwhelming
(4) The core and mainstay of procedural due process is notice and a hearing.
(5) A court is supposed to guarantee due process , not intentionally violate that right.
(6) The related matter is that judge Newsome had promised opponents Schafler's assets . as fees. On that date of April 25, 2001 Newsome ordered all of petitioners IRA sold and the proceeds awarded to the cronies as fees. if petitioner receives her IRA exemption, that the bounty hunting cronies will not receive the IRA as "interim bounty hunting rewards' There will be no money to steal on the cronies behalf.
(7) Petitioner's counsel argued vigorously that deciding without notice and a full evidentiary hearing violates the rules, and due process, and counsel also argued he was not prepared but judge Newsome was abusive, sarcastic, ignored counsel. and said he is prepared. He was prepared to give petitioner's IRA to the cronies on whose behalf he argued and did so.
(8) This is an odd holding by the Court of Appeals , essentially saying even following due process requirements, this was already prejudged, and must stay that way.

DD6, pg1 IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge Maxine Chesney Presiding

Filed June 12 .2001

Order denying Debtor's Motion to Dismiss Trustee's Appeal, Affirming Judgment of Bankruptcy Court

RICHARD J. SPEAR trustee
Plaintiff and Appellee

v

PEPI SCHAFLER
Defendant and Appellant

Before the Court are two related bankruptcy appeals filed , respectively by Pepi Schafler (debtor) and By Richard Spear (trustee)Debtor appeals the judgment entered on an order granting summary judgment in favor of trustee, and trustee appeals the order granting debtor's motion to extend time to file a notice of appeal from that judgment. Also before the court is debtor's motion to dismiss trustee's appeal ,and debtor's renewed motion for a stay pending appeal. Having reviewed the briefs fil;ed in connection with both appeals , as well as the papers submitted in support and in opposition to the motions , the court deems all maters suitable for decision without oral argument. Accordingly debtor's requests for oral argument are hereby denied ,and the July 6, 2001 hearing on debtor's motion to dismiss trustee's appeal is hereby vacated.

Background*

On March 26 . 1996 debtor filed a petition for relief pursuant to chapter 7 of the bankruptcy code. Debtor attached to the petition schedule B-personal property, and listed the following asset: trustee of trust the beneficiaries of whom are debtor's adult children. **Debtor also

* although the Court alleges to have culled the information from the record on appeal the Court has created incoherent mess and a construct of distorted facts and dates that do not at all correspond to the documents and the timeline. The Court also does not take notice, that the petition was filed in another jurisdiction 3000 miles away.

** the Court is acknowledging that the "trust was scheduled" which is accurate and gratifying , since judge Newsome of the Oakland bankruptcy court has insisted otherwise. that he asserted legitimized his frequently repeated plan to take away by force petitioner's assets and give them to his cronies Dennis Davis and Richard Spear. He did do in the end.

attached to the petition a statement of financial affairs, in which she stated that she had not transferred any property within one year immediately preceding the commencement of this case. In her petition , debtor declared under penalty of perjury that the information was true and correct. On July 5, 1996 the bankruptcy court entered a discharge order. A final decree was entered on July 9, 1996 and the case was closed. On April 28, 1998 *trustee moved to reopen the case for the purposes of allowing trustee to investigate and pursue recovery of potential bankruptcy estate assets which may have been undisclosed. On May 7 1998, ** the bankruptcy court granted the motion. On May 5 1999,*** trustee instituted an adversary proceeding by filing a complaint in the reopened bankruptcy case. On November 3, 1999 trustee filed an amended complaint ****The first amended complaint sought inter alia a declaration that certain assets specifically stock certificates and a condominium apartment held by the above referenced trust (Max Family Trust) were the assets of the bankruptcy estate.****. Trustee alleged that the max family trust was a sham *****, that debtor had transferred her assets for no consideration in to the trust before filing for bankruptcy and that debtor thereafter used the assets of the trust as her own property .On November 3, 2000 debtor filed a motion for summary judgment . Debtor argued inter alia that trustee 's cause of action for declaratory lacked merit because the bankruptcy estate had irrevocably abandoned such assets to her when the case was closed in 1996. On December 4, 2000 , trustee filed opposition and a cross-motion for summary judgment . With respect to trustee's declaratory relief cause of action . he argued that debtor in 1996, fraudulently concealed her interest in the stock certificate and condominium, ******and therefore such assets

* trustee , an attorney member of the DC bar did not move on his own , but on the promise of a bribe by a scorned angry former husband who was seeking to harass. See appendix.

** that was by the court in Greenbelt, Maryland.

*** the Court in it's fact pattern omitted one year of events, and this motion was ex part filed in the bankruptcy court in Oakland California.

**** judge Newsome of the Oakland bankruptcy court had promised Davis and the phantom trustee petitioner's assets; he said so the first time petitioner had the misfortune to be in his presence, frequently repeated it thereafter, and the last time he repetaed it that he said so the firts time. The bounty hunters were ready to collect on their promised bounty. This is what it was about.

***** The Max Family Trust was created in **April 1986.**

******Most of the stock certificates representing petitioner's IRA, and the apartment which had little equity in it, were and are exempt under maryland law.

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were never properly scheduled. Trustee argues that under such circumstances, no technical abandonment occurred., and the property remained the assets of the estate. At the hearing *held December 18, 2000 the bankruptcy court made , inter alia, the following finding: (1) There was no issue of genuine material fact that the Max Family Trust was nothing but a sham and a fraud on the debtor's creditors**, because the assets of the trust were always treated by debtor as her personal property , and the (2) the assets were not technically abandoned, to the debtor upon closure of the case because, debtor failed to disclose in her schedules the true value of her interest in the trust which was one hundred percent of over five hundred thousand dollars in stocks and the Florida apartment. Instead she listed her interest as being worth one dollar. The bankruptcy court granted summary judgment in favor of trustee on the declaratory relief cause of action. On December 21, 2000 the bankruptcy court filed it's judgment after cross motion for summary judgment , whereby judgment was entered in favor of trustee, on his claim for declaratory relief, and the following properties were declared the property of the bankruptcy estate: 91) all stocks and bonds held by trustee that had been turned over to him by Schafler, all stocks and bonds owned by the trust as of march 26, 1996, and the proceeds of same, (3) a Florida condominium apartment, more fully described in an exhibit to the judgment . all other property held by the debtor in the name of the trust as of March 26, 1996 and it's proceeds. On January 16, 2001 debtor's counsel*** filed a motion to extend time to file a notice of appeal pursuant to rule 8002 (c)(2). On January 17, 2001 the bankruptcy court held a hearing on this motion to extend, and it was granted. The bankruptcy court ordered counsel for debtor to pay $1.000 to counsel for trustee to compensate him for the costs incurred in opposing the motion . After the hearing the bankruptcy court filed it's order to extend time to file notice of appeal. On January 17, 2001 debtor filed a notice of appeal from the judgment . On January 24, 2001 , trustee filed a notice of appeal from the order extending time to file notice of appeal.

* it is called a "hearing" for unknown reasons, possibly to deceive. In reality Newsome (judge) makes all decisions by himself, most likely with his favorites, and comes to work just to read them. he represents his cronies, does not allow others to be heard.

** what a deceptive, mendacious, fraudulent , shameful statement this is coming from the ignoble judge Newsome.! because he is so concerned about the creditors, he awarded all of petitioners assets -one third of a million dollars mostly to Davis and some to Spear, as fees! What a crook!

*** Without going into too much detail the ignoble Davis did not provide- the judgment order until time to file a notice of appeal had passed. Petitioner attempted to make counsel aware that Davis and Spear are unethical and corrupt individuals, and totally untrustworthy.

DISCUSSION

A. Trustee's appeal: 1. Debtor's motions to dismiss.

Debtor argues that trustee's appeal should be dismissed on the ground counsel for him accepted from debtor's counsel $1.000 which the court ordered to be paid as a sanction. Debtor's counsel contends that by accepting the $1.000 payment trustee accepted the benefits of the order from which he appeals manifesting an intention to bring the matter to a definite conclusion. When a party accepts the benefits of a judgment under circumstances which indicate an intention to finally compromise and settle a disputed claim, an appeal may be foreclosed. Hawaiian Paradise Park Corp v Friendly Broadcasting Corp.414 F 2nd 750, (9th Cir 1969)." in such a case , it is the mutual manifestation of an intention to bring the litigation to a definite conclusion upon a basis acceptable to all parties which bars a subsequent appeal, and not the fact, standing alone, that benefits under the judgment were accepted. Additionally , the general rule is subject to an exception where the court has adjudicated separable or divisible controversies , in which the appealing party may accept the benefits of a divisible portion of an order and appeal the adverse portion thereof . See Fidelcor Mortgage Corp. v Insurance Co of North America, 820 F 2nd 387 (11th Cir 1967).At the January 17, 2001 hearing , it was debtor's counsel who suggested that it might be appropriate for the bankruptcy court to order him to pay the expenses incurred in opposing debtor's motion ; at no time did trustee* or counsel for trustee, request such a sanction or award of costs . At that hearing , after the court granted debtor's motion for an extension of time, and denied her motion for a stay pending appeal , the court ordered counsel to pay counsel for the trustee $1.000, the stated reason being that trustee's counsel had to file opposition on very short time. Schafler's counsel argues that under such circumstances , payment of the sanctions award was a condition of granting the motion extending the time to file a notice of appeal, and that Davis's acceptance of the $1.000 was a manifestation of his intent to terminate the matter. A review of the record , however clearly indicates that the court neither conditioned it's grant of an extension on payment of the sanction, nor intended that the trustee receive any benefit from this award. At a hearing subsequent to filing the notice of appeal, the court ruled that the $1.000 sanction was not property of the estate, but rather a sanction separate and apart, and that the $1.000 had been awarded to counsel for the trustee, and not the trustee. Because trustee received no benefit from the January 17, 2001

* the trustee is a figurehead , someone whose name , because of "insider connections" is placed on thousands cases which he "farms out" to other lawyers who pay him kickbacks and he collects the statutory trustee fee. he does not know what is going on, no participation.

order granting debtor's motion to extend time to file an appeal, debtor cannot establish the applicability of the rule set forth in Hawaiian paradise Park,. Moreover , the bankruptcy court's ruling , as set forth above can only be interpreted to mean that the question of whether she established entitlement to an extension of time was completely divisible from the question of whether counsel for trustee was entitled to an award of sanctions See Fidelcor Mortgage Corp. 820 F 2nd at 370 (11th Cir 1987). (where court adjudicates divisible controversies in one order, appealing party may appeal adverse portion). Accordingly debtor's motion to dismiss trustee's appeal is hereby denied.

2. Merits a. Standard of review.

An order granting an extension of time to file a notice of appeal is reviewed for abuse of discretion . See Marx v Loral Corp 87 F3rd 1049, (9th Cir. 1996) "A court abuses it's discretion when it bases it's decision on an erroneous conclusion of law or when the record contains no evidence on which it could rationally base its decision". United States v. Prairie Pharmacy Inc. 921 F 2nd 21199th Cir. 1990)

b. Discussion.

A notice of appeal from a judgment , order , or decree entered by a bankruptcy court shall be filed within ten days of the entry thereof. See Rule 8002 (a). The bankruptcy court however has discretion to extend the time for filing a notice of appeal upon a showing of excusable neglect. See Rule 8002(c). The determination of whether excusable neglect exists is an equitable one, depending upon all the relevant circumstances , including "the danger of prejudice to the non-movant , the length of the delay and its potential impact on judicial proceedings , the reasons for the delay, and whether it was in the reasonable control of the movant, and whether the movant acted in good faith." See Pioneer Inv. Servs. Co v Brunswick Assocs. Ltd Partnership ,507 U.S. 380, 395, (1993): Reynolds v Wagner , 55 F 3rd 1426 (9th Cir 1995) (holding Pioneer standard applies to motion for extension of time to file appeal).Prior to Pioneer , in the Ninth Circuit , where a party sought an extension of time to file an appeal, the standard for determining excusable neglect was " a strict one.", and an extension of time was available only in extraordinary cases where injustice would otherwise result. " See Alaska Limestone Corp v Hodel, 799 F 2nd 1409 (9th Cir 1986) (citations omitted). In light of Pioneer, however the Ninth Circuit has recognized that excusable neglect can cover cases of negligence carelessness and inadvertent mistake. See Briones v Rivera v Riviera Hotel & Casino,116 F3rd 379 (9th Cir 1997)

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Here, as the Judgment was entered on December 21, 2000 a timely notice of appeal* would have been filed no later than January 2, 2001. Debtor , through counsel first received a copy of the judgment on January 10, 2001 when such copy was provided to Schafler by trustee. Debtor filed her motion for an extension of time three court days therefater. In support of debtor's motion for an extension of time , debtor's counsel submitted a declaration providing the following reasons for counsel's failure to timely file her notice of appeal: (1) on December 19, 2000, counsel for trustee sent counsel for debtor a copy of a proposed judgment which had been submitted tot he bankruptcy court, but debtor did not receive thereafter a copy of a filed judgment as required by Rule 9022-1 of the bankruptcy local rules •• (2) counsel was aware that, pursuant to rule 9021-1(c0 of the bankruptcy local rules , submitted orders not approved as to form are ordinarily lodged with the bankruptcy court , and then held by the court for 7 days ***. (3) although counsel was present on December 18, 2000 when the bankruptcy court rules on the parties' motions for summary judgment counsel did not consider it unusual that he had not received an order by early January due to the holiday season, (4) because the bankruptcy court had read a lengthy pronouncement of it's findings at the December 18, 2000 hearing, counsel believed that the court might also be preparing it's own order, and (5) counsel did not have a subscription to the Pacer system***

* all this information is culled from the opponent's submission

the following are footnotes by the court;

** B.L.R. 9022-1(a) provides that 'the party submitting a form of order or judgment in contested matters and adversary proceedings shall submit: (1) An original and one copy of a list of the names and addresses of the submitting and contesting parties , and the United States Trustee: (2) Sufficient copies of the order or judgment for the submitting party, each contesting party , and the United States trustee; and (3) two stamped envelopes addressed to the submitting party and one stamped envelope addressed to each contesting party , and the United states trustee. B.L.R. 9022-1(c0 provides that "once the order or judgment is signed , a conformed copy will be mailed to the submitted party," by the Clerk , who will note the date of the entry on the conformed copies and serve them by mail on the parties named on the list referred to in paragraph (a)(1)"

*** The proposed Judgment submitted by counsel for trustee, and thereafter signed by the bankruptcy court ,was not approved as to form by counsel for debtor or by debtor.

****PACER is an electronic system by which parties can access the docket sheets for court actions. See In re Lawrence, 244 B.R. 868 , 876 (S.D. Fla 2000).

At the hearing on the motion to extend time, counsel for debtor further explained that he did not file a notice of appeal prior to entry of judgment , as allowed by rule 8002(a) * because he substituted in the action after the December 18, 2000 decision and needed to familiarize himself with the record before determining if an appeal would have any arguable merit. Counsel also explained that he was counting on the time it would take for a judgment to be entered to conduct such an evaluation. On appeal trustee argues that because debtor's counsel neither checked the docket to determine the date of entry of the judgment , nor filed a notice of appeal pursuant to rule 8002(a) prior to entry of the judgment , the bankruptcy court abused it's discretion by granting debtor's motion. As trustee acknowledges , it's argument is directed solely toward the one Pioneer factor concerning the reason for the delay. Trustee does not argue that any of the other Pioneer factors weigh against a finding of excusable neglect . The bankruptcy court , however , was obligated to "examine all of the circumstances involved rather than holding that any single circumstance in isolation compelled a particular result regardless of the other factors". See Briones 116 F 3rd at 382 n. 2. As noted trustee focuses on only one circumstance , the reason for the delay. In that regard , debtor's explanation is weak; counsel could have checked the docket to determine if, and when, a judgment had been entered or could have filed a notice of appeal pursuant to rule 8002(a) . Although such conduct may show a lack of regard for the court's docket , in absence of any evidence of deviousness or willfulness or of prejudice to debtor's ability to defend the judgment on appeal , and in light of the very short period of delay , the bankruptcy court did not abuse it's discretion in determining that debtor was entitled to relief pursuant to rule 8002(c) ** Accordingly , the bankruptcy court's order extending time for debtor to file a notice of appeal from the judgment is hereby affirmed.

B. Debtor's appeal. 1. Standard of review.

An order granting summary judgment is reviewed de novo. See in Re: Lewis , 97 F 3rd 1182 , 1185 (9th Cir 1996) " The reviewing court will affirm a grant of summary judgment only if it appears from the

* Rule 8002(a) provides that a "notice of appeal filed after the announcement of a n order or decision but before entry of judgment , order or decree shall be treated as filed after such entry and on the day thereof.

** trustee's reliance on In Re Cahn , 188 B.R. 627 (BAP 9th Cir 1995) is misplaced. There the party who requested an extension received a copy of the appealable order four days before the deadline for filing timely notice of appeal. Here in contrast , debtor did not receive a copy of the judgment until after the deadline to file a timely appeal had passed.

after viewing all evidence and factual inferences in the light most favorable to the nonmoving party, that there are no genuine issues of material fact and that the moving party *is entitled to judgment as a matter of law." In re Yarbrow, 150 B.R. 233 (BAP 9th Cir. 1993)

2. Discussion

Pursuant to 11 USC # 554 (c) "unless the court orders otherwise , any property scheduled under section 521 (1) of this title ** but not otherwise administered at the time of closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title." Such abandonment is termed a "technical abandonment" see in Re Menk,241 B.R. 896, (BAP 9th Cir 1999). Although the general rule is that a technical abandonment is irrevocable , the first clause of #554 (c) provides bankruptcy courts with "discretion to affect or prevent technical abandonment simply by ordering otherwise. "See in Re DeVore 223 B.R. 193 (BAP 9th Cir 1998). "The statute does not limit such an order to the period prior to case closure , (citation omitted), and courts have set aside technical abandonments in appropriate circumstances. "See id (citing in re Shelton 201 B.R. 147 (Bankr. E.D Va. 1996)."Unless the court orders otherwise , property of the estate that is not abandoned under 554 and not administered in the case remains property of the estate. "11 USC #554 (d) As noted, debtor appeals the bankruptcy court's order declaring that certain stocks and bonds , the proceeds thereof, a Florida condominium apartment, and any other property held in the name of the max family trust as of March 26, 1996 and the proceeds thereof are property of the bankruptcy estate. Debtor , in sworn declarations filed with the bankruptcy court, declared that the extent of her interest in the trust was $1.00 and that she had not transferred any property within one year of March 26, 2001***When debtor filed her petition for bankruptcy , the trust held brokerage accounts valued at approximately **** $296.000 The trust also held title to the Florida condominium apartment which debtor had transferred from her name to that of the trust for no consideration three months prior to filing for bankruptcy. ***** Debtor retained the right to revoke amend , alter or modify the trust agreement governing the trust.

* the court failed to clarify who is the moving party. Petitioner moved for summary judgment to get away from a biased abusive predatory court, and opponent cross moved. Aren't both parties the moving parties?

**the max family trust was scheduled. in the introduction to this opinion the court said the max family trust was scheduled. (dd 6 pg 1)

*** petitioner signed nothing on March 26, 2001 under oath or otherwise. the court is in error.

**** this money was petitioner's IRA exempt under Maryland law, subject to this petition.

***** Since the trust was scheduled, transferring the apartment was a non event. judge Newsome of the Oakland bankruptcy court said on the first encounter to petitioner that he would give her assets to Spear and Davis, aso all he needed was an attempt to legitimize it.

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The bankruptcy court after reviewing the evidence submitted, found that no triable issue of fact existed as to whether debtor's statements about the extent of her interest in the max family trust and her denial that she made transfers* in the one year period prior to the filing of the bankruptcy petition were false**, or that debtor's false statements were made for the purpose of concealing assets.*** Accordingly, the court concluded that trustee was entitled to summary judgment on his claim for declaratory relief. On appeal , debtor argues that the bankruptcy court erred **** in granting summary judgment because trustee failed to show there was no triable issue of fact as to whether debtor's disclosures were sufficient to provide trustee with "constructive notice" of her interest in the assets in question. *****Debtor contends that she should not have to "bear responsibility for the failure of the trustee to administer the case and the trust assets before he asked the bankruptcy court to close the case. " ****** Debtor relies heavily on In Re Atkinson 62 B.R. 678 (D Nev 1986) . In that action debtors scheduled a pending lawsuit as an asset by listing the name of the court case, the name of the court in which the action was pending and by stating that the value was unknown to the debtors. After the bankruptcy case was closed , certain creditors moved to reopen on the ground that sufficient reason existed for the court to revoke the trustees technical abandonment of

* the court has made numerous schizophrenic like statements about petitioner's integrity and the facts, which are not acceptable. The trust was scheduled as the court said, Appendix 1- and it is indicated to be in petitioner's possession, and why counsel listed the interest as $1 is not known but not relevant. the trustee, an attorney member of the DC bar under oath represented to the court that he had done a 'through diligent investigation(pg 24 appendix) This double standard is unacceptable. while it is evident that Judge Chesney wanted to affirm judge Newsome of the bankruptcy court, but spewing inaccurate insults is not acceptable either. The transfer of the apartment that appears to be the mainstay of this opinion , was to an entity that was scheduled.

** the statements were not false

*** the trust was scheduled. how would petitioner have known in advance that the former trustee would abandon the asset. what a ridiculous attempt by the court to make excuses for the former trustee and vilify petitioner. judge Newsome of the bankruptcy court had said immediately after the case was transferred that her assets would be given to Spear and Davis, not creditors but his cronies. What could be done about it?

**** There had never been an evidentiary hearing in this matter. Newsome decided the issues in house or wherever, and came to work to read them.

***** the former trustee had constructive notice. When he sought reopening of the closed and discharged case, see appendix , he did not tell the court that assets were not properly scheduled. He told the court in seeking reopening about about additional assets.

******Plaintiff's counsel was correct that the court blamed petitioner for the trustee's failures. But they are 'insiders" petitioner is not.

the asset. The creditors argued that the debtors reference to the lawsuit was "cryptic" and so " inadequate a disclosure as to cause the trustee to fail to properly administer the asset" The court in Atkinson framing the issue as "whether the lawsuit was properly scheduled and considered by the trustee" held that debtor's reference to the lawsuit on their schedules and statements was not "cryptic" nor an effort to conceal it's existence from the trustee. Rather according to the court , debtors had provided the trustee with sufficient information to allow the trustee to examine the debtors about the lawsuit, and to review the pleadings and records on file in the court where the lawsuit was pending prior to making an "informed decision" about abandoning the asset. * Notably , none of the information provided by the debtors in Atkinson was false** as is the case here. debtor fails to explain how her false statement that her interest in the max family trust was $1 *** and that she had not transferred any property from her name to the trust within the within the prior year was sufficient to give trustee constructive notice **** that the trust in actuality held assets worth hundreds of thousands of dollars. ***** Debtor cites no case in which any court has held that an assets was properly scheduled when false ****** information about the nature and value if the assets was provided. Cf id. at 679 (holding "properly scheduled" asset considered and abandoned by trustee is irrevocably abandoned to debtor. As indicated in the Court's February 20 , 2001 order denying appellant's motion for stay pending appeal, "no case has held that revocation ******* is inappropriate where a debtor has wrongfully concealed assets or the nature of her interest therein.

* Judge Chesney herself had said that the trust was scheduled. The former trustee, who has been a private trustee for 10 years, who is an attorney , member of the DC bar knew more about inquiries into assets than petitioner. More of judge Chesney schizophrenic comments vindicating someone responsible, while abusing the one with the least knowledge.

** none of the information provided was false; the trustee had the chance and choice to inquire. One may wish that judge Chesney would be more cautious in her words. It is evident she wants to affirm her own-judge Newsome, but she should not be insulting.

*** did anyone prevent the former private trustee, an attorney from inquiring? Do these private trustees have a duty to work, or just line their pockets?

****for the twentieth time the apartment was transferred into an entity that was scheduled.

***** Most of those assets which were petitioner's IRA were exempt under Maryland law as was the apartment: an interest in a homestead is exempt up to a certain amount. It is also exempt in California.

****** There was no false information provided. There are numerous cases holding that even not scheduling an asset at all is not necessarily and intent to defraud. To expect petitioner to know more than the attorneys preparing the petition or those that are trustees is the height of judicial abuse. The trustees only seek to line their pockets.

******* **Revocation of what? petitioner had sought the revocation of her discharge and dismissal of the chapter 7 petition, but the court ignored it, because judge Newsome of the bankruptcy court had promised petitioner's assets to his cronies. There is no reported case in which a corrupt bankruptcy judge seized the assets of a former debtor, and hands them over to his cronies. That is the issue in the present case.**

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Indeed , bankruptcy courts have recognized that one of the "universal exceptions to the finality of abandonment of an asset" is where "the trustee is given incomplete or false information of the asset by the debtor" *See In re Ozer , 208 B.R. 630 (Bankr. E.D. NY 1997). The reasoning behind this "universal exception" is that the "abandonment could not have been knowing and intentional if the above flaws existed". As stated by one bankruptcy court, the "bankruptcy code does not deprive creditors of the right to share in the debtor's property merely because the trustee failed to find the property **or failed to take possession of it for creditors" See in re Harris, 32 B.R. 125 (Bankr. S.D. Fla 1983). Rather the bankruptcy code deprives the creditors of the right to share in the debtor's property only ***if that property was formally abandoned by the court after a hearing or if the property was explicitly identified in the debtor's bankruptcy schedules and ****was never administered by the trustee during the pendency of the case . See id. Here no triable issue of fact exists as to whether debtor provided incomplete and false information about her assets on her bankruptcy schedules and statements There is no evidence to support a finding that the "universal *****exception to the finality of abandonment of an asset " should not be applied. Further , debtor has provided no authority for the proposition that her false statements can be excused on the ground that the trustee****** did not learn of the falsity of the statements prior to the closing of the case . Consequently , debtor has failed to establish that the bankruptcy court erred by not finding there was a triable issue as to whether the trustee was on constructive notice.*******

*the trustee signed a statement under oath that he had thoroughly investigated this matter. He has been a private trustee for 10 years, is an attorney member of the DC bar, isn't he expected to know more that an individual filer?

** this reopening and rapacious plunder of petitioner's assets was not on behalf of creditors but to line the pockets of the trustees. Every penny of the assets stolen from petitioner were given by the Oakland bankruptcy court judge Newsome to his cronies: the "phantom trustee" and his attorney as "fees "He is nothing but a corrupt predator and thief.

*** the creditors never came forward after discharge. this was not reopened on behalf of creditors

**** the property was explicitly identified Judge Chesney said so. on another page.

***** universal is a pompous term: is it applicable in Germany? in Indonesia?

****** This is about the trustees lining their pockets. Otherwise who needs these crooks?

******* Substantive due process rights demand that where a property interest is at stake, that it be triable issue.

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Finally , debtor argues that the bankruptcy court erred by failing to consider the length of time btween the closing and reopening of the case . See in re Adair , 253 B.R. 85, 89 (BAP 9th Cir 2000) (holding in considering a motion to revoke abandonment of an asset , it is appropriate to consider the length of time between closure of the case and request to reopen). The bankruptcy court , in it's recitation of the facts, stated the dates of the closure and reopening , thus establishing that it was aware that twenty two month *had elapsed between the closure and reopening. The bankruptcy court also was aware that the former trustee moved to reopen the case after he was "alerted to the debtor's concealment of assets by her ex spouse. **. Nothing in the record indicates that the trustee delayed moving to reopen once he became aware of the need to investigate the existence of concealed assets. Accordingly the bankruptcy court did not err in granting summary judgment in favor of trustee on his claim for declaratory relief.*** The debtors renewed motion for a stay pending appeal filed may 10, 2001 is hereby denied as moot.

Conclusion

For the reasons stated above,

1. the motion to dismiss trutsees appeal is denied ,

2, the bankruptcy court's order granting debtor's motion for an extention to file a notcie of appeal is hereby affirmed,

3. the judgment of the bankruptcy court is affirmed.

It is so ordered

ss/ Maxine M. Chesney
United States District Judge.

*. Actually the seizure of petitioner's assets , and the subject of this order took place four and one half years after the petition was filed. the twenty two months is only partially true. The facts that its was really fifty four months.

** He was promised a bribe to reopen and harass petitioner.

*** the bankruptcy court -judge Newsome paid of his cronies with petitioner's assets.